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CURRENT TOPICS

Lord Goddard

WE are happy indeed to join in the felicitations to LORD GODDARD on the completion on 5th April of his twenty-fifth year as a judge. Mr. F. W. BENEY, Q.C., said in the Court of Appeal on that day: "During those twenty-five years this country has gone through crises and many important pages in its history have been written, and not the least important relate to the administration of justice." In more than one way Lord Goddard has made a lasting impression on the administration and machinery of justice. It was largely his drive and determination that secured the speeding up and better arrangement of the hearing dates of cases both in London and on circuit. At the same time, he has constantly coped with the arduous work of the Court of Criminal Appeal, and has taken a vigorous part in debates in the Lords when he felt it his duty to do so. Above all, in the public mind he typifies the majesty, the fairness and the essential common sense of the law.

The Budget

IN a personal sense the Budget can hardly be other than satisfactory for the successful professional man, whatever may be the reservations of salaried solicitors. Writing in these pages earlier this year (p. 5, *ante*), Sir EDWIN HERBERT pointed out that the burden of modern taxation was making the solicitor's profession less attractive to the prospective entrant. The CHANCELLOR'S decision to give relief to the upper range of incomes, taken together with last year's provision for retirement benefits, have between them wrought a significant change for the better in the outlook for the future of private practice. The publication of the Finance Bill must be awaited for details of the proposed legislation to deal with the situation disclosed by *Gatehouse* v. *Vise* (p. 272, *ante*, and p. 319, *post*) regarding the incidence of Sched. A tax where flats are let at a premium and a low rent; and of the intended changes in estate duty law as to gifts *inter vivos* and retirement annuity benefits.

Solicitors' Undertakings

A NOTE on solicitors' undertakings further to that in the *Law Society's Gazette* for March, 1951, appears in the current issue of the *Gazette*. It states that a solicitor who gives an undertaking, and does not clearly disclaim personal responsibility thereunder, must honour his undertaking promptly. The

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fact that subsequently events occur which alter the position will not, in the Council's view, entitle the solicitor to avoid liability unless he has expressly guarded against those events in the undertaking itself. The Council also emphasise the need for clearly wording an undertaking, as in the event of ambiguity the Council will construe it in favour of the recipient. Solicitors should not give undertakings which they are not able to implement personally, or in a matter where circumstances beyond the control of the solicitor may supervene to make implementation impossible. If it is unavoidable to give an undertaking in such a case, the solicitor should make it clear that it is not personal, and he cannot guarantee that it will be possible for it to be carried out. Where the undertaking is not personal, but does not expressly exclude personal liability, and is one which the solicitor himself is personally able to fulfil, the Council would regard failure by the solicitor to honour it, or the absence of a satisfactory reply after being asked for an explanation with regard to such failure, as justifying the vesting of discretion in the Registrar with regard to the issue of that solicitor's practising certificate, in accordance with s. 10 of the Solicitors Act, 1941, and s. 38 (1) (*g*) of the Solicitors Act, 1932.

Printed Conditions

IT is obvious from recent correspondence in *The Times* that there is a growing awareness of the fact that the printing of large numbers of printed conditions in small type on contract forms is unfair to the customer, who either cannot take his business elsewhere or finds similar conditions prevailing wherever he takes his business. In many cases, also, it is productive of the litigation which it is intended to prevent. In instructing legal draftsmen to cover every contingency, clients do not appreciate that they are asking for every doubtful or debatable point of law to be revealed in the draft, with the increased probability that some adventurous spirit will be encouraged to try his luck. Litigation also sometimes seems inevitable where both sides have presented to each other commercial documents bespattered with different conditions. Mr. RICHARD YORKE, in *The Times* of 6th April, cited a case where the insurers of a multi-million-pound trading company were willing to accept the risk of deleting thirty-five out of thirty-nine conditions without increase of premiums. He suggested that insurance companies could give the impetus for a general revision of contracts by quoting alternative rates for shortened conditions. The evil, however, has a much wider extent than that of insurable contract risks. It is to be hoped that the Law Revision Committee has already placed the matter on its agenda.

Costs of Motion for Contempt

THE Court of Appeal was faced with a difficult dilemma in *Morgan* v. *Carmarthen Corporation* (*The Times*, 6th April). The court had found a newspaper editor and a reporter guilty of contempt of court, and had ordered them to pay the costs of the motion as between solicitor and client. The taxing master reduced leading counsel's fees from 300 to 100 guineas and junior counsel's fee from 200 to 67 guineas. On a review of the taxation DANCKWERTS, J., allowed the full fees. The journalists appealed, and the MASTER OF THE ROLLS said that he would allow the appeal with some regret. Costs might be given in lieu of committal, and in many cases the order would operate substantially by way of indemnity, but that was not necessarily so (*Giles* v. *Randall* [1915] 1 K.B. 290). On the other hand, it would be contrary to the public interest if an individual was deterred from bringing a real case of contempt before the court by the fear that he would have to pay out of his own pocket some part of the costs, as he was performing what in one aspect at least was a public duty. The Master of the Rolls concluded by saying that the matter might be considered by the Rules Committee, so far as it concerned contempt cases. Lord Justice HODSON agreed that it was unfortunate that parties should have to bring contempts to the attention of the court partly at their own expense. Lord Justice ROMER also agreed in allowing the appeal.

What is " Permanent " Employment ?

" How permanent is ' permanent ' ? " seems to have been the question for the decision of the House of Lords in *McClelland* v. *Northern Ireland General Health Services Board* (*The Times*, 5th April). It is not surprising that there was a division of opinion, and that the view that permanent employment meant that the employers debarred themselves from giving notice except for the reasons specified in the contract obtained a majority support of only three votes to two. The post in question was that of a senior clerk under the Northern Ireland General Health Services Board. The appellant had answered an advertisement which stated that, subject to a probationary period, appointments would be permanent and pensionable. She was employed, and some time after her probationary period had expired her employment was terminated on her marriage. The High Court and the Court of Appeal of Northern Ireland both held that her dismissal was valid, on the ground that she was a civil servant holding office during the pleasure of the Crown. The majority view in the Lords was expressed by LORD OAKSEY, LORD GODDARD and LORD EVERSHED. Lord Goddard said that the fact that an advertisement offered permanent employment did not mean that employment for life was offered. It was an offer of general, as distinct from merely temporary, employment ; the person employed would have an expectation that, apart from misconduct or inability to perform his duties, the employment would continue for an indefinite period. LORD KEITH and LORD TUCKER, dissenting, both thought that the express powers to terminate the contract were not exhaustive of the board's powers.

" . . . Non Dormientibus "

LAWYERS, and judges in particular, might be sensitive to any suggestion that they are especially interested in the subject of sleep. Yet any that have followed the correspondence in *The Times* on the virtue of being able to make do with less than the usual period of ministration from " Nature's soft nurse " must have quickened on reading the lines—

> " Six hours in sleep, in law's grave study six,
> Four spend in prayer, the rest on nature fix."

The writers of the letter which quoted this couplet, while they duly attributed other citations, omitted to mention that this was an epigram of Sir Edward Coke. (The identity of the contemporary who pointed out that six hours was also the duration of the great Chief Justice's normal day on the bench is lost to history.) As for the modern lawyer, the time allotted for study of the current conundra of his mystery is far too short. The demands of sleep, or of prayer, or of nature must *pro tanto* be denied.

ANNUAL LEGAL CHECK-UPS?

My car is regularly checked at about each 1,000 miles, my teeth every six months if they are lucky, my spectacles only when I have been feeling sure for about two years that the lenses need a change, and as for a medical overhaul I only submit to that when I have no alternative. I suppose the principle to be extracted from the above is that the car is lubricated and maintained in my absence, and I am not personally involved except to the extent of leaving and collecting the car. But one must not judge others by oneself and imagine they will not submit to the bother of regular check-ups of all kinds.

It is, therefore, with the highest admiration that I lift my hat to the compilers of an impressive document which has just reached me from the U.S.A. Yes, you have guessed it—for it is entitled "Annual Legal Check-up." My courage fails me when I think of the struggle I would have to get some of my clients in for such an inquisition—and of the struggle I would have to extract a reasonable fee for it! Yet there is something to be said for the beautiful vision of, say, a thousand clients on one's list coming forward happily each year, guineas in hand, to have themselves "legally" checked, and it may be this vision which inspired the authors of the document. It is a workmanlike and thoroughly prepared piece of work.

The document comprises twelve quarto pages, is in book form and, in that typical American way of doing things thoroughly, holes are already punched at the side for convenient filing.

The scope of the scrutiny

It begins, of course, with the client's personal details, and those of his spouse, father and mother, followed by those of his dependants ("Consider why dependent and liability of client to them"), and involves an examination of birth and marriage certificates with a careful direction to "check residence for voting, licences, etc." Incidentally, under "Other Dependants," we find a space for previous spouses and the instruction to include data necessary to analyse the client's obligations and liabilities arising from previous marriages.

Next we come to the Service Record, and this involves the lawyer in reviewing the client's service records and reviewing his pension, insurance, scholarship, medical-hospital, veteran's preferences and spouse's rights. This is followed by a record of the client's real and leasehold properties and an exhortation to consider whether his titles appear to be clear and merchantable—a point which will, one feels sure, appeal to conveyancers, as many a held-up completion could have been avoided if the snag had been detected in time.

Wills are dealt with next, the details being checked over, and care being taken to check that the executor (called "the fiduciary") is still alive and that the witnesses are likely to be still available if the client died. Any changes in the family or fortunes of the client are noted and their effects considered in case a new will or a codicil should be necessary. This leads on to a review of the insurance policies of the client, and here quite an amount of work is clearly involved. It is a brave lawyer who claims he can understand an insurance policy and if he can also explain it satisfactorily to his client then he must be a man with much time to spare!

If the legal inquisitor is not completely exhausted by now he certainly will be before he gets to the end of the next section, which deals with his client's taxes, and involves him in interesting speculations on the honesty of the gentleman's tax returns and evidence in support thereof ("Comment on irregularities or insufficiencies"). Another direction says: "List gifts made by client recently of substantial value or amount," followed by the rather gritty question: "Has client reported such gifts as required by law?" One wonders how straight the answers are likely to be to those queries—or the next one, which reads: "Has client reported and paid all intangible taxes? Review this law with client." Not me, thank you, though I am delighted with the thought of intangible taxes, but perhaps they mean something even more ominous than the type we know only too well as tangible.

Under "Business Data" one learns that what we know as a business name is called an "assumed name," which does not sound so well. Like ours it needs a certificate. It would appear that there is also such a document as a "partnership certificate" and this also has to be filed. Two very good notes remind the client to consider whether his partnership agreement needs revising "to conform with present business relations and rights of the partners," and whether the client's will makes suitable provision in the event of dissolution on his death or the death of any other partner, and whether reciprocal life assurance is carried. These matters so often get overlooked in practice and very frequently the succession arrangements, which seemed so right at the outset when the deed was drafted, are now hopelessly out of touch with reality.

The keen lawyer will find much opportunity for new business if his client reacts as he should to some of the queries such as: "Does the company have a pension scheme? If so, review arrangements and make recommendations." One can sense a few weeks' work there, or many months if there is no scheme and one is to be recommended.

Prevention better than cure?

Notwithstanding the doubts which assail one when one contemplates introducing such a system in this country, it has to be admitted that a very great deal of trouble would be saved for many clients and their successors and many grave mistakes would be avoided in business affairs as well as private. After all, it would be only the first of such check-ups which would be really onerous, as subsequent ones would be confined to any changes. Any solicitor who may be inspired by the above to try to persuade his clients to attend for a legal check-up will doubtless find most helpful the following list of documents which the U.S.A. lawyer apparently expects his clients to stagger along with—social security card, birth and marriage certificates of self, spouse and children, any divorce decrees, armed forces discharge papers, disability records, etc., abstracts, surveys and deeds to real estate, lists of expenditure for improvements of real estate, completion statements for any sales of real estate, will, all insurance policies pertaining to client or his business, income tax returns, real estate tax receipts, partnership agreements, company record books, last financial statement of business, agreements with stockholders, documents relating to sale or purchase of business assets, leases and options, etc.

The English businessman does not yet take his lawyer into constant consultation as is done in some other countries. If he did, it is certain he would benefit by advice on more things than legal matters—for the solicitor in all his varied dealings with all types of humanity gains experience in much more than the practice of the law! There are, indeed, many useful

questions in the list to draw attention to matters which are often overlooked, such as the whereabouts of the client's valuable papers and the names of those who have access to them or would know about them (what about things in security deposit vaults that only the client knows about ?), whether the client's partners have also included suitable clauses in their wills, are properties fully covered by insurance in the light of current values (this reminds the writer of a case which came to his notice of a house which was burned down and it was then discovered that the cover had not been revised since 1937—it stood then at £700 and at the time of the fire a contract for sale at £2,800 was being engrossed for signature), is the client an executor of someone else (and, one wonders, does his own executor know a particularly "sticky" executorship may descend on him when the client dies if the latter has been unable to clear it up in his lifetime ?), does the client's fire policy cover loss of profits as well as buildings, and so on.

If the above creates interest among a sufficient number of solicitors, no doubt an English version could be produced, though in some respects it would have to proceed on different lines from the American version. One ventures to prophesy that the number of future troubles which would be saved would be very, very high indeed, and not only for the client !

R.

SUMMARY JURISDICTION: SOME ACTS OF 1956—I

THIS article will review the statutes passed last year with particular reference to their effect on magistrates' courts. Consolidation Acts include the Medical Act, 1956, which consolidates the enactments relating to the General Medical Council and the registration and privileges of medical practitioners. The Therapeutic Substances Act, 1956, consolidates the Acts relating to penicillin, vaccines, toxins, insulin, etc. Another consolidating Act is the Police (Scotland) Act, 1956; in s. 5 power is given for constables of the two English border counties to execute warrants to arrest criminals (but not debtors or witnesses) and to recover stolen goods in the three Scottish border counties and *vice versa*. These Acts are in force.

The Administration of Justice Act, 1956

Section 29, which is in force, increases the penalty for assaulting county court officers and for rescuing goods seized under process of a county court to a fine of £20 or one month's imprisonment, on summary conviction. If a person is sent to prison, there is no power in the magistrates to shorten the term inflicted, but a county court judge, who has a like power of committal for one month, may discharge a prisoner, whom he himself has sent to prison, at any time.

The Agriculture (Safety, Health and Welfare Provisions) Act, 1956

This Act is in force. It creates a number of offences, punishable by fine. Regulations may be made under s. 1 to protect workers employed in agriculture against injury and by s. 2 young persons employed on agricultural work are not to be employed in lifting heavy weights; regulations may prescribe the maximum weight liftable by any persons so employed. Later sections refer to the provision and maintenance of sanitary conveniences and first-aid boxes for agricultural workers and the making of regulations to prevent children riding on machines engaged in agricultural work and for the notification and recording of agricultural accidents and prescribed diseases. No regulations appear to have been made at the time of going to press.

Coroners are required to notify inspectors of the Ministry of Agriculture of inquests on persons killed in the course of agricultural operations and, in certain circumstances, they must adjourn their inquests to enable an inspector to be present. Information must be given, if an inspector is not present, to him of any neglect or default appearing to the coroner or jury to require remedy (s. 9).

Section 14 (2) provides that failure to do certain specified things under the regulations may be declared to be a continuing offence and the common-form provision as to the criminal liability of directors, etc., of a body corporate is contained in s. 14 (3). Some of the sections make the employer the guilty person where the Act or regulations are contravened; s. 15 provides that, where there is a contravention for which a person is liable to a fine and it is due to the act or default of another person, the latter may be convicted whether or not proceedings are taken against the other. By s. 16 it is a defence that the person charged used all due diligence to secure compliance with the provision contravened.

The Children and Young Persons Act, 1956

This Act is in force. It relates to the apprehension of juveniles who have escaped from remand homes, approved schools or the care of fit persons in England and have gone to Scotland, and vice versa. It will be of little concern to the practitioner.

The Clean Air Act, 1956

This Act relates to the control of the emission of smoke and is discussed at 100 SOL. J. 641. The provisions relating to smoke from furnaces, smoke control areas, works to which the Alkali, etc., Works Regulation Act, 1906, applies and colliery spoilbanks are in force (see the Clean Air Act, 1956 (Appointed Day) Order, 1956: S.I. 1956 No. 2022). The provisions not yet in force include those relating to dark smoke and grit and dust from furnaces. The Smoke Control Areas (Authorised Fuels) Regulations, 1956 (S.I. 1956 No. 2023), indicate the authorised fuels for the purposes of s. 11 of the Act; they include anthracite, briquetted carbonised fuels and coke.

The Copyright Act, 1956

This Act is not yet in force and may not be for some months. The new Act will replace nearly all the various statutory provisions giving summary remedies for infringement of copyright to be found in Stone's Justices' Manual, 88th ed., pp. 726 to 730. In their place, s. 21 enumerates a number of offences relating to infringing copies of copyright articles and plates and to the performance of a literary, dramatic or musical work; these offences can be tried in magistrates' courts and are punishable by fine or, in some cases, two months' imprisonment. The court may, whether or not there is a conviction, order that any infringing article or plate shall be destroyed or delivered to the owner of the copyright. Such an order would presumably be enforced under the Magistrates' Courts Act, 1952, s. 54. Section 21 (10) of the Copyright Act, 1956, gives a right of appeal to quarter

sessions against the order; this provision is necessary because the general right of appeal given by s. 83 of the Magistrates' Courts Act applies only where there has been a conviction.

The Criminal Justice Administration Act, 1956

This Act was mentioned at 100 SOL. J. 610 and is in force. The Crown Courts of Liverpool and of Manchester now replace the assizes and quarter sessions of those two cities and will constitute the assizes for criminal business in the West Derby and Salford Divisions of Lancashire. The two Crown Courts will therefore take the committals to assizes in those two divisions and will also take the committals to quarter sessions from the cities of Manchester and Liverpool. Committals and appeals to quarter sessions from other magistrates' courts in the two divisions will continue to be taken by the county quarter sessions or appropriate borough quarter sessions, however, i.e., Lancashire (West Derby Hundred or Salford Hundred) Quarter Sessions from county divisions, and Salford, Oldham, Wigan and Bolton Quarter Sessions from those boroughs.

The magistrates' courts in the Salford Division are Manchester (city and county), Salford, Bolton (borough and county), Oldham (borough and county), Rochdale (borough and county), Stockport (including the parts in Cheshire), Ashton-under-Lyne, Bury, Eccles, Heywood, Middleton and Mossley.

Those in the West Derby division are Liverpool (city and county), Leigh (borough and county), St. Helens (borough and county), Southport (borough and county), Warrington (borough and county), Wigan (borough and county), Ormskirk, Prescot and Widnes.

The Act does not limit the power of a magistrates' court to commit to more convenient assizes or sessions under s. 10 of the Magistrates' Courts Act.

Judges of the High Court will presumably continue to attend at Liverpool and Manchester, in the same way as they attend at the Old Bailey, for the trial of the more serious cases and the less serious cases will be tried by the recorders of the two cities and other judges named as commissioners. Every judge of each Crown Court has the powers of a judge of the High Court in relation to the authorisation of the preferment of bills of indictment before his court. The Crown Courts will also hear appeals from the magistrates' courts of the cities of Liverpool and Manchester (not being cases stated for the High Court under s. 87 of the Magistrates' Courts Act) and the Crown Courts may themselves state cases for the opinion of the Divisional Court in the same way as other courts of quarter sessions hearing appeals may, e.g., under the Criminal Justice Act, 1925, s. 20. The Crown Courts will each sit at least eleven times a year and the assizes at Lancaster will act as assizes for the Northern Division of the county. Each division is deemed to be a county for the purposes of the Criminal Law Act, 1826, ss. 12 and 13, which relate to offences committed on a county boundary or on a journey.

Part II makes provision as to the retirement, removal and remuneration of recorders throughout the country, allows a recorder to order the formation of more than one additional court and exempts boroughs with a separate commission of the peace from contributing to the costs of county magistrates' courts. The Act also transfers to the Lord Chancellor or the Chancellor of the Duchy of Lancaster certain functions of the Home Secretary in relation to stipendiary magistrates. An important amendment is found in s. 12, which provides in effect that quarter sessions of any borough, whether it has a population exceeding 50,000 or not, may try offences listed in Sched. I to the Administration of Justice (Miscellaneous Provisions) Act, 1938; formerly, borough quarter sessions could try such offences only if the population exceeded that figure. Such offences include concealment of birth, gross indecency between men, certain false statements and declarations, forgery of passports, certain coinage offences and certain forgery offences. The borough courts of quarter sessions which now have this extended jurisdiction appear to be Abingdon, Andover, Banbury, Barnstaple, Bedford, Bridgwater, Burton-on-Trent, Canterbury, Deal, Devizes, Dover, Folkestone, Grantham, Gravesend, Hereford, King's Lynn, Lichfield, Margate, Newark, Newbury, Penzance, Pontefract, Rochester, Salisbury, Scarborough, Shrewsbury, Winchester, and Windsor.

The Dentists Act, 1956

This Act is in force. It amends the law relating to dentists in various ways and contains provisions as to disciplinary proceedings before the General Dental Council. It also creates various offences, some triable summarily only and others triable on indictment or summarily; the maximum penalty for fitting artificial teeth, one may note, will be a fine of £500. An offence under the Dentists Act, 1921, s. 4 (*b*), will, by virtue of s. 30 (3) of the new Act, now be triable summarily (see Stone's Justices' Manual, 88th ed., p. 1572), and summary proceedings against an unregistered person for practising dentistry in breach of the Dentists Act, 1921, s. 1, may be brought within one year from the commission of the offence (see s. 28 (3) of the new Act). A Bill to consolidate the Dentists Acts is now before Parliament.

The Family Allowances and National Insurance Act, 1956

This Act is in force and was discussed at 100 SOL. J. 690. By s. 5, when a juvenile has been committed by a court to the care of a local authority as a fit person, that authority may allow him to be under the charge and control of a parent, guardian, relative or friend; further, the authority may, after such placing, apply for the revocation of the "fit person" order.

The Finance Act, 1956

This Act, in s. 3, allows the sale of spirits and liqueurs in any quantities, however small, at off-licences and so legalises the sale there of "miniatures." Section 5 amends the Vehicles (Excise) Act, 1949, in relation to tower wagons and mobile concrete mixers; it further provides that proceedings under the cited Act of 1949 and regulations made under it may be brought by any person and must be brought within six months, save that proceedings for under-payment or non-payment of duty can be brought only by or on behalf of a local authority and the limit then is three years. Both sections are in force and were noted at 100 SOL. J. 640 and 624 respectively.

The Hotel Proprietors Act, 1956

This Act is in force and is discussed at p. 137, *ante*. That article points out that the criminal liability of the keeper of an inn which offers sleeping accommodation to travellers has not apparently been modified.

The Licensing (Airports) Act, 1956

This Act is in force and exempts international airports specified by the Minister of Transport and Civil Aviation from the operation of s. 100 of the Licensing Act, 1953, which prohibits the sale of intoxicating liquor except during permitted hours.

The Magistrates' Courts (Appeals from Binding Over Orders) Act, 1956

This Act is in force and was noted at 100 SOL. J. 555. Under it a person ordered by a magistrates' court to enter into a recognisance to keep the peace or be of good behaviour, e.g., for uttering threats or as a " peeping Tom," may appeal to quarter sessions.

Occasional Licences and Young Persons Act, 1956

This Act is in force and was noted at 100 SOL. J. 556. It prohibits the supply of liquor to juveniles under eighteen at places at which an occasional licence is in force and their employment in bars there.

The Restrictive Trade Practices Act, 1956

This Act is in force and the Bill for it was discussed at 100 SOL. J. 178 and 195; see also *ante*, pp. 95 and 119. Text-books on the Act are on sale. So far as magistrates' courts are concerned, offences are created by ss. 16 and 33; some are punishable on indictment as well as summarily but the accused will have no right to elect for trial by jury. By s. 16 (3) a default in furnishing particulars or documents is declared to be a continuing offence and s. 16 (4) is the common-form provision as to the liability of directors. By s. 17 proceedings under s. 16 may be instituted only by or with the consent of the Director of Public Prosecutions or the Registrar of Restrictive Trading Agreements, and an information for an offence under s. 16 may be laid within three years after the commission of the offence and within twelve months after the date on which evidence sufficient to justify the proceedings came to the knowledge of the director or registrar. This seems to mean that it cannot be laid after three years have expired and, if sufficient evidence came to the Director's knowledge, on, say, the very day of the offence, it must be laid within a year from that date. By s. 17 (5) an offence under s. 16 may be tried either where it was committed or where the offender carries on business. There is no time limit for proceedings on indictment.

The Road Traffic Act, 1956

The provisions of this Act which came into force last year were discussed at 100 SOL. J. 722 and 891. Other provisions were brought into force on 1st January, 1957 (see 100 SOL. J. 920), and others came or come into force on 1st March, 1st April and 1st July (see *ante*, pp. 89 and 212). A further article will discuss the new provisions and some impending changes in speed limits. (*To be concluded*) G. S. W.

Common Law Commentary

SAFE SYSTEM IN THE LIGHT OF GENERAL PRACTICE

LORD PORTER made a distinction of value, and expressed his views very neatly when he said (in *Bolton* v. *Stone* [1951] A.C. 850, at p. 859), talking of the refutation of a charge of negligence, " The defendants are in a stronger position if the risk was so small that they never thought about it, than if they had considered it and decided that the risks were very small." Reaffirming that view in *Morris* v. *West Hartlepool Steam Navigation Co., Ltd.* [1956] 1 W.L.R. 177, at p. 189; 100 SOL. J. 129, his lordship added: " Men do not stop to consider whether each step they take is safe. They act upon what is generally recognised as a safe course until some untoward event shows that they may have been mistaken, and then, as Lord Thankerton pointed out in *Glasgow Corporation* v. *Muir* [1943] A.C. 448, at p. 445, one must be careful not to impute negligence from *ex post facto* events."

The first part of the latter quotation is not so happy, and perhaps that is why the learned law lord found himself in the minority. He was, however, not a lone figure, having on his side another law lord and two lords justices of the Court of Appeal. *Morris's* case is another of those difficult cases where the decision of the trial judge is reversed twice in succession so that the original finding is restored.

The facts were that a seaman, whilst the vessel was at sea, fell forty feet down an open unguarded hatchway, and was seriously injured. Evidence was given by seamen of all ranks and up to forty years' experience, that guards were not in practice put round the hatchway in the circumstances in question. These circumstances were, however, found to be somewhat special when the evidence was closely examined: they applied only to grain ships that carried grain in bulk and only when at sea preparing for a new cargo to be taken on at the next port. There was a passageway along the deck beside the hatch some twelve feet wide, and no previous accidents had been known of the type suffered by the plaintiff.

Was the risk of injury " so small as never to be thought about " or was it one which ought to have been foreseen and of such a nature that a seaman ought not to be exposed to it? There was room for argument, and one of the most compelling arguments, which nevertheless failed, was that it was more dangerous to ask men, whilst the ship was in motion, to put up the guard rails than it was to ask them to walk along a twelve-foot wide deck by the side of the unguarded hatchway. The answer to this was that the men who would put up the rails would be experts at that job, would be fully aware of their danger and would take the necessary precautions, whereas any seaman might be asked to walk by the side of the hatchway, though in this case the occasions when people would be required to go near the open hatchways when all had been made ready would be few.

So in spite of the evidence of the general practice in that walk of life not to put up guard rails, and in spite of the other evidence that for some forty years those familiar with the conditions had not known of any such accident, it was held that there was negligence. Lord Porter's view that men act upon what is generally recognised until some untoward event occurs, is not a high enough standard of care.

Faults of omission

It is of interest to note that both Lord Morton of Henryton and Lord Porter, who dissented, and Lord Reid and Lord Cohen, who, with Lord Tucker, were in the majority, quoted with approval a phrase of Lord Dunedin's taken from *Morton* v. *William Dixon, Ltd.* [1909] S.C. 807, at p. 809, and often since quoted, e.g., by Lord Normand in *Paris* v. *Stepney Borough Council* [1951] A.C. 367, at p. 382. His lordship

said: "Where the fault of the employer consists of what I may call a fault of omission, I think it is absolutely necessary that the proof of that fault of omission should be one of two kinds, either to show that the thing which he did not do was a thing which was commonly done by other persons in like circumstances, or to show that it was a thing which was so obviously wanted that it would be folly in anyone to neglect to provide it."

Clearly all the learned law lords were agreed that common practice as embraced in the above phrase was some guide in deciding whether an *omission* is negligence, but it is not conclusive. In *Morris's* case, where the common practice itself takes the form of an omission, little or no comfort can be gained by that fact. Lord Reid sums up the matter very well in the concluding paragraph of his speech. He said that the likelihood of an accident may have been very small but at least it was sufficient to prevent the respondents from maintaining that the accident could not have happened without the plaintiff being negligent. And the consequences of any accident were almost certain to be serious. There was very little difficulty, no expense and no other disadvantage in taking an effective precaution. His lordship concluded by saying: "Once it is established that danger was foreseeable, and therefore that the matter should have been considered before the accident, it appears to me that a reasonable man weighing these matters would have said that the precaution should have been taken."

The end of a trend?

This case, therefore, is another case in the modern trend to impose a higher degree of care on the master. *Paris* v. *Stepney Borough Council* was a decision along that road as was *Bonnington Castings* v. *Wardlaw* [1956] 2 W.L.R. 707; 100 SOL. J. 207; *Staveley Iron & Chemical Co., Ltd.* v. *Jones* [1956] 2 W.L.R. 479; 100 SOL. J. 130; and *General Cleaners* v. *Christmas* [1953] A.C. 180. All these are House of Lords' decisions. But *Morris's* case, with its numerous dissenting opinions, shows that this tendency may be nearing its limit.

L. W. M.

GIFT BY ESTOPPEL?

THE case of *Re Wale* [1956] 1 W.L.R. 1346; 100 SOL. J. 800 (considered at length by "A B C," *ante*, p. 220), provides an opportunity for considering whether an incomplete gift or trust can be perfected by estoppel. The facts may be briefly stated. A voluntary settlement (executed by the settlor and the intended trustees) recited that "the settlor is absolutely entitled to the investments specified in the schedule hereto and has transferred them into the names of the trustees," and by cl. 2 the trustees were to hold the investments upon trusts for the settlor, her daughter and the daughter's children. The recital was untrue. The settlor was the beneficial owner of all the investments of which some (called the "A" investments, with which alone this article is concerned) were registered in her own name. No transfer of any of the investments was ever executed in favour of the trustees. The settlor died in 1953, and the question for decision was whether the investments were bound by the settlement. Upjohn, J., held that as regards the "A" investments the settlement was invalid. It was a case of an imperfect gift and the settlor was not a trustee of the "A" investments. His lordship based his decision on the rule in *Milroy* v. *Lord* (1862), 4 De G. F. & J. 264, that where a gift is intended to take effect by transfer and the transfer is incomplete, the court will not enforce the gift by holding the transfer to operate as a declaration of trust.

In *Re Breton's Estate* (1881), 17 Ch. D. 416, Hall, V.-C., described the rule as "a monstrous state of the law"; and it does seem odd that a donor, having assigned his whole beneficial interest by deed, should be able in derogation of his grant subsequently to give the same interest to another person. To defeat the rule by estoppel would, therefore, be a meritorious act.

The question of estoppel was not raised at the hearing; perhaps because it was considered to be untenable. It is, however, respectfully suggested that the settlor was estopped by the recital from denying the transfer to the trustees, and that the case should have been decided on the assumption that the transfer had been actually made whereby the trust became an executed trust enforceable by volunteers. The recital was in the form commonly used in settlements when the investments have been transferred to the trustees and complies with the rule that the recital must be clear and unambiguous. Registration was not necessary to complete the gift: *Re Rose* [1952] 1 Ch. 499, 515.

Effect of untrue recital of transfer

The effect of a recital of the transfer of property, where in fact no transfer had been made, has been considered in several cases. In *Wiles* v. *Woodward* (1850), 5 Ex. 557, a deed dissolving a partnership between paper makers recited that paper to the value of £898 had been delivered to the plaintiff. In fact no paper had been so delivered, and the jury found that the defendant had converted the paper. The court held that both parties were estopped from denying the delivery to the plaintiff. Therefore the defendant had converted property belonging to and in the possession of the plaintiff, who was entitled to recover its value.

In *Story* v. *Gape* (1856), 2 Jur. (N.S.) 706, it was recited in a marriage settlement that the intended husband had transferred £3,000 Consols into the names of the trustees of the settlement, which contained the usual trusts. In fact, no transfer of the Consols was ever made and the husband died bankrupt, a dividend of £817 having been paid to the trustees of the settlement. At the suit of a child Sir Page Wood, V.-C., held that the estates of the two trustees, both of whom had died, were liable to make good the balance of the Consols. The Vice-Chancellor said that by the settlement the trustees had acknowledged the transfer into their own names and the fund must be taken to have been in the hands of the trustees on the trusts of the settlement.

In *Stone* v. *Stone* (1869), L.R. 5 Ch. 74, a post-nuptial settlement made in pursuance of an ante-nuptial agreement recited that the husband had agreed to settle £1,000 and had paid that sum to the trustee, and the latter covenanted with the husband to invest the £1,000 in the joint names of himself and the husband and to hold the trust fund on the usual trusts. The £1,000 was not in fact paid to the trustee or invested as required by the settlement. The husband having died, the children claimed payment of the £1,000 from the husband's estate, the defence being that the £1,000 was a debt barred by the Statute of Limitations.

Sir George Giffard, L.J., held that the husband was a trustee of the benefit of the covenant by the trustee to invest the £1,000 in Consols and was bound to see that the trust was carried into effect, and as he had not done so his estate was bound. The significance of this decision is that it was based on the assumption (contrary to the fact) that the trustee had received the £1,000 as recited.

These cases show that when a party to a deed is estopped from denying the truth of a recital that property has been transferred, the deed will be interpreted and enforced on the assumption that the recital is true.

Volunteer claiming estoppel by deed

The question whether a volunteer may claim the benefit of an estoppel by deed arose in the following cases.

In *Smith* v. *Scott* (1859), 6 C.B. (N.S.) 771, the plaintiff sued to recover money due under a deed for the grant of a licence to use an invention. The deed recited that the plaintiff had obtained a grant of letters patent for the invention and the defendant was held to be estopped from denying the validity of the patent. The defendant also pleaded " that he never got or took any benefit under the deed." This plea was held to be bad, " no consideration being necessary in the case of a contract under seal."

In *Citizens Bank of Louisiana* v. *First National Bank of New Orleans* (1873), L.R. 6 H.L. 352, 362, Lord Selborne said that a trust could be constituted by equitable estoppel: if so, why not by deed which removes the need for consideration ?

In *Levett* v. *Levett* [1898] 1 Ch. 82, the plaintiff by a voluntary settlement assigned her reversion under an earlier settlement expectant on the death of her mother. The voluntary settlement recited that the property was held upon trust after the death of the mother for the plaintiff, her executors, administrators and assigns, but did not recite that under the earlier settlement the mother had an overriding power of appointment. Later, the mother irrevocably appointed the property to the plaintiff. Romer, J., held that the voluntary settlement did not bind the plaintiff's interest under the appointment, the recital being incomplete and not referring to the fact that her interest was defeasible. There was no equitable estoppel, for the principle of equitable estoppel was not applied in favour of a volunteer. His lordship continued: " Nor in this case can I see any estoppel in law . . . I can find no estoppel in the recital for the reasons I have already pointed out in dealing with the question of construction." The inference is that, had the recital been sufficiently definite, the voluntary settlement would have been perfected by the estoppel.

The decision in *Re Wale*

It is submitted that the above cases justify the view that in *Re Wale*, by virtue of the recital of the transfer of the " A " investments to the trustees, the trust became a complete or executed trust enforceable by the beneficiaries being volunteers. The beneficiaries were entitled to be placed in the same position as if the shares had been transferred to the trustees (see *Re Bahia and San Francisco Railway Co.* (1868), L.R. 3 Q.B. 584, 596). On the assumed or conventional facts, the settlor had converted the investments which no longer belonged to her, and her estate was, therefore, liable for the loss to the beneficiaries (*ibid.*, at p. 597). Alternatively, the settlor's estate was liable for her failure to enforce the covenant by the trustees to hold the investments (which must be assumed to have been transferred to them) on the trusts of the settlement (see *Mountford* v. *Cadogan* (1816), 19 Ves. 635, 638; *Adey* v. *Arnold* (1852), 2 De G. M. & G. 432, 437, and *Stone* v. *Stone*, *supra*).

The writer submits his views with diffidence and will welcome criticism or correction. But one thing is certain; that is that a solicitor concerned with a settlement of shares should advise the parties that the transfer must be completed before the settlement is executed. Failure to give this advice might involve the trustees and possibly the solicitor in heavy liability.

L. H. E.

Landlord and Tenant Notebook

SHORT TENANCIES OF FARMS

In a note to s. 3 (1) of the Agricultural Holdings Act, 1948, the editor of one of the standard works on that statute submits that a tenancy of an agricultural holding expressed to be for a definite period of less than two years (" for example, ' for one year certain and no longer ' or ' for two years less two days ' ") would expire without the necessity of giving any notice to quit. The proposition seems to be arguable if not doubtful, but is worth considering; as is the present effect on security of tenure if it be not sound, in view of the enactment of the Landlord and Tenant Act, 1954.

Section 3 (1) runs: " A tenancy of an agricultural holding for a term of two years or upwards shall, instead of terminating on the expiration of the term for which it was granted, continue (as from the expiration of that term) as a tenancy from year to year, but otherwise on the terms of the original tenancy so far as applicable, unless, not less than one year nor more than two years before the date fixed for the expiration of the term, a written notice has been given by either party to the other of his intention to terminate the tenancy." The next subsection makes it quite clear that if such notice be given by the landlord the ordinary security of tenure provisions will apply.

" The agreement shall take effect . . ."

The objection to the proposition is, of course, to be found in s. 2 (1): " Subject to the provisions of this section, where under an agreement . . . any land is let to a person for use as agricultural land for *an interest less than a tenancy from year to year* . . . then, unless the letting . . . was approved by the Minister before the agreement was entered into, the agreement shall take effect, with the necessary modifications, *as if it were* an agreement for the letting of the land for a tenancy *from year to year* . . ."

" An interest less than a tenancy from year to year "

To be an " agricultural holding " at all, land must be comprised in a " contract of tenancy " which is defined by s. 94 (1) as " a letting of land, or agreement for letting land, for a term of years or from year to year "; so that at first sight the point might be made that a tenancy for a term of two years *or less* must be outside the purview of s. 3 (1). But effect must be given, if possible, to the words " a tenancy of an agricultural holding for a term of two years or upwards " and the conclusion which invites itself would be that s. 3 (1)

is simply concerned with fixed terms as opposed to periodic tenancies and is designed to give fixed term tenants the same protection as that enjoyed by periodic tenants, and that the reason why it can simply speak of "a tenancy of *an agricultural holding* for a term of two years or upwards" is that shorter tenancies have been looked after by s. 2 (1); whatever the parties may have agreed, the agreement is to take effect as if it were an agreement for a tenancy from year to year—and thus to satisfy the definition of "contract of tenancy" and, ultimately, that of "agricultural holding" (at all events, if let for use as agricultural land).

The above assumes, however, that any tenancy which is not "for a term of two years or upwards" is a letting "for an interest less than a tenancy from year to year." And this may indeed be arguable.

The note gave, it will be remembered, two hypothetical examples: a tenancy for one year certain and no longer, and a tenancy for two years less two days.

There is, perhaps, no conclusive authority on the question whether a tenancy from year to year can, at common law, be determined by notice expiring at the end of its first year. Decisions which shed light on the problem have all been concerned with the interpretation of provisions by which parties have varied the common-law *length* of notice. But in one of these, *Mayo* v. *Joyce* [1920] 1 K.B. 824, Lush, J., said: "In my view, the parties intended that there should be a yearly tenancy, that is, a tenancy *for one year certain*, but which might continue longer. Whether it did continue longer would depend on whether it was determined by notice . . ." The clause which the learned judge was construing was one expressly substituting three for six months' notice to quit and expressly providing that such might be given at any time; still, if the *obiter dictum* correctly states the law, the effect would indeed be that neither a tenancy for one year certain nor a tenancy for two years less two days would be caught either by s. 2 or by s. 3.

Landlord and Tenant Act, 1954, Pt. II

I can conveniently consider the possible applicability of Pt. II of the Landlord and Tenant Act, 1954, to such tenancies together with its possible applicability to a short agricultural tenancy "approved by the Minister": say, a monthly tenancy of a market garden.

Part II applies: "Subject to the provisions of this Act . . . to any tenancy where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes"; by s. 43 (1) (*a*) it does not apply "to a tenancy of an agricultural holding." Section 69 provides that "agricultural holding" has the same meaning as in the Agricultural Holdings Act, 1948.

So what we have to consider now is whether (1) a fixed term tenancy of agricultural land, the term being less than two years but not granted with ministerial approval; and (2) a periodic tenancy of such land, the period being less than one year, granted with that approval, make the demised premises "agricultural holdings" as defined. And it is certainly arguable that they do not, the definition insisting, as we have seen, on there being a "contract of tenancy," itself defined as a letting "for a term of years or from year to year."

Were it not for the alternative, "or from year to year," one might refer to the Law of Property Act, 1925, s. 1, dividing all estates in land subsisting at law into estates in fee simple absolute in possession and terms of years absolute. By the definition of "term of years" to be found in s. 205 (1), "term of years" *includes* a term for less than a year, or for a year or years and a fraction of a year or from year to year. One is driven to the conclusion that in the Agricultural Holdings Act, 1948, s. 1 (1), the Legislature proposed to make provision for tenants holding for at least two years; that s. 2 (1) extends the same rights to tenants with shorter terms unless the Minister of Agriculture, etc., sanctions the agreement; that s. 3 excludes from security of tenure protection tenants holding for two years or less; but that those excluded, either by reason of ministerial approval or by reason of shortness of fixed term, were, after a few years' exposure to the rigours of the common law, given a measure of security of tenure by a statute designed to assist business and professional tenants. And, while there are differences as well as similarities between the two varieties of protection, those who come under the Landlord and Tenant Act, 1954, Pt. II, are, on the whole, no worse off than those who have to rely on the Agricultural Holdings Act, 1948.

R. B.

SOCIETIES

At the seventy-second annual general meeting of the CHESTER AND NORTH WALES INCORPORATED LAW SOCIETY, held at The Castle, Chester, on 27th March, the following officers were appointed for the ensuing year: President: Mr. Thomas J. Alcock, of Sanbach; vice-president: Mr. T. Wayman Hales, of Chester; hon. treasurer: Mr. H. L. Birch, of Chester; and hon. secretary: Mr. J. C. Blake, of Chester. The following were elected to serve on the committee: Mr. P. W. Wood, of Chester; Mr. Norman P. Timperley, of Crewe; Mr. H. E. Williamson, of Colwyn Bay; and Mr. Hywel G. Jones, of Wrexham. The meeting was followed by the annual dinner, held at the Blossoms Hotel, Chester, which was attended by seventy-five members and guests, which included Mr. T. G. Lund, C.B.E., secretary of The Law Society, Mr. W. Gibson, chairman of the Sandbach U.D.C., and Mr. G. G. Lind Smith, deputy chairman of the Chester County Quarter Sessions.

Mr. Ernest Higginbottom has been appointed president of the STOCKPORT INCORPORATED LAW SOCIETY.

At the annual dinner of the INCORPORATED LEEDS LAW SOCIETY held at the Queen's Hotel, Leeds, on 28th March, Sir Edwin Herbert, President of The Law Society, Mr. Justice Wallington, His Honour Judge D. O. McKee and Mr. Justice Diplock were among the distinguished guests present.

The 1957 conference of the RATING AND VALUATION ASSOCIATION will be held on 26th and 27th September, at the Royal Festival Hall, London.

A course on Industrial and Factory Law will be held under the auspices of the INDUSTRIAL WELFARE SOCIETY on 28th–30th May, at Robert Hyde House, 48 Bryanston Square, London, W.1, when Mr. Harry Samuels, M.A., Barrister-at-Law, will be the lecturer. Particulars of the course can be obtained from the secretary of the society at the above address.

HERE AND THERE

PERILOUS PRECEDENT

Two solicitors at Westminster County Court have just done a most dangerous thing, a thing fraught with incalculable peril for themselves, for their firms, for the legal profession and, indeed, for the whole majestic structure of British justice. It may well seem to the thoughtless a small thing, but, then, the match which a careless smoker strikes in a garage is a small thing and yet it may start a blaze which, if circumstances are unfavourable, can consume an entire town. For the sake of the livelihood of thousands, we hope that very few will hear of what they did (save in the way of awe-struck admonition) lest the thing should spread like an infection. And what was it the two solicitors did in Westminster County Court? Each had a case before the Registrar. Each wanted his case heard first. The Registrar (momentarily instigated by some mischievous elemental or other malign spirit) suggested that they should toss up for it. The usher then stood between them, tossed a coin and in effect delivered the verdict, which was accepted with thoughtless laughter by the onlookers. Now, after even a moment's reflection, it will be seen what a dangerous precedent has been set. Everybody connected with the law knows that litigation is the most uncertain of all speculations. There is no science of the accidental and every case is a chapter of accidents. Only the inexperienced lay client, burning with his sense of injury, believes that if only he can unfold his artless tale in a British court of justice, the triumph of right in a sympathetic tribunal is a foregone conclusion. One sometimes hears a rather superior wonder expressed at the primitive credulity of our ancestors who submitted their cases to the arbitrament of trial by battle. Yet trial by evidence and argument is every bit as chancy. It is a chance whether your solicitor is highly skilled in handling the particular sort of problem which you have brought to him or whether his speciality lies in a totally different line of country. It is a chance whether the one key fact on which almost every case turns can be elicited from the witnesses. It is a chance whether the other side do or do not scruple to commit perjury and how good they are at it. There is nothing like the sudden shock of a solid array of perjury for disconcerting a scrupulously honest litigant who had never dreamed of such a possibility. Your expensive, and consequently overworked, leader may only have had time to glance at his junior's tabloid note of your case before he is on his feet in court, and chance can play the very devil with that situation. Then there is the state of the judge's digestion, the level of the jury's intelligence and the direction and strength of the prejudices of both. In the realm of pure law, the judge of first instance may be reversed (by a majority) in the Court of Appeal and restored (by a majority) in the House of Lords. Trial by battleaxe has only been superseded by trial by a battle of wits.

TRIAL BY LOTTERY

Now, suppose, despite the frenzied efforts of university dons to rationalise English law and make the wilderness of precedent as orderly as a municipal park, more and more people began to say to one another: "Why, it's all a toss up." One would be on the threshold of a new legal system—trial by lottery. After all, it would only be a matter of substituting one blind goddess for another, and the English love of gambling would give the transition a powerful stimulus. Naturally it would not happen all at once, but already we have made a start, for what is the whole system of payment into court but a gamble from start to finish? It might take some time before trial by lottery was extended to the major issues in litigation, but a great deal could be done in chambers in dealing with applications for particulars or for leave to administer interrogatories. Instead of the prolonged and unseemly wrangling that goes on, how much more decorous and expeditious would be the toss of a coin on each disputed point: and it is doubtful whether, in terms of abstract justice, the result would be so very different. Again, already the laws of chance decide before which judge a matter will come and on his known personality and proclivities often depends the decision of the parties whether to fight out the case or settle at once. The fact that it is a mere chance who hears a particular case is so much taken for granted that it is still repeated as a joke that, when asked by the president of the Court of Appeal whether he would object to the case in hand continuing on the morrow with only two lords justices, the formidable Mr. Danckwerts (father of the present judge) demanded: "Which two?" It would at least give counsel a certain satisfaction if they had so much part in the selection of their tribunal as to be able to toss up for it. In the end, the system of trial by lottery would probably work out in its final form as a procedure whereby each side laid its case before the court. So long as no obstinate wrangle developed submissions would be made but not pressed, but once the contestants got into a clinch or if it became evident that a matter of real doubt had been raised a bell would ring, the usher would be called in to manipulate the ceremonial coin and there would be a "toss up." The amount of time, money and law reporting saved would be incalculable. The gambling instincts of the litigating classes could be satisfied. And so long as the proceedings were conducted with gravity and decorum (like the Jockey Club) tradition would be upheld.

RICHARD ROE.

"THE SOLICITORS' JOURNAL," 11th APRIL, 1857

ON the 11th April, 1857, THE SOLICITORS' JOURNAL, dealing with an attack on the Court of Chancery in the *Daily News*, said: "We are bound to admit that unnecessary delays do occur in the offices of the Court of Chancery and that some expectations founded on the important reforms inaugurated a few years ago remain at this hour unfulfilled. We must, however, be allowed to add that the solicitors of the court are not responsible for these shortcomings and that they are in many cases to be attributed to the neglect of the practical suggestions which have been urged upon the authorities by solicitors with far more public spirit than success. . . . The popular notion, we are quite aware, is that the solicitors contrive and preserve all these impediments to the free course of business, and that they are personally interested in so doing. But this is a double fallacy. Some reforms . . . have been over and over again recommended by solicitors. And, although there may be a few large offices which, having as much business on hand as they can do or wish to do, and perhaps a great deal more, do find a gentle and often intermittent course of proceeding suit their habits and arrangements best; it is quite certain that the great majority of the profession would discover their true advantage in every change which tended to simplify and accelerate litigation."

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Judicial Committee of the Privy Council

FIJI: NATIVE LAND: COMPULSORY ACQUISITION: COMPENSATION: TO WHOM PAYABLE

Nalukuya *v.* Director of Lands
Native Land Trust Board of Fiji (Intervener)

Lord Oaksey, Lord Tucker, Lord Somervell of Harrow, Mr. L. M. D. de Silva. 25th March, 1957

Appeal from the Fiji Court of Appeal.

In 1944 the Governor of Fiji, acting through the first respondent, the Director of Lands, compulsorily acquired some 434 acres of land in Fiji from the Tokatoka Nadrau, a native land holding unit of which the appellant was the head, under the provisions of the Crown Acquisition of Lands Ordinance, c. 122 of 1954. The amount of compensation was subsequently agreed at £7,985 plus £3,393 1s. 6d. interest. The appellant issued a summons for directions seeking the court's approval of the compromise on behalf of his infant children and directions as to the application of their share of the said sum, and for an order that the shares of the appellant and of the other adult members of the Tokatoka Nadrau be paid to them to be applied by them as they thought fit. The agreed issues were: (1) Should the capital or any part of the fund in court be paid to the members of the Tokatoka Nadrau? and (2) if not, to whom should the same be paid? The Crown Acquisition of Lands Ordinance did not provide to whom such compensation was to be paid. The Fiji Court of Appeal, setting aside the order of the Chief Justice (the trial judge), decided that the provisions of s. 15 of the Native Land Trust Ordinance, c. 86 of 1945, which provided that "... the purchase money received in respect of a sale or other disposition of native land shall be distributed in the manner prescribed or invested and the proceeds so distributed as the Board may decide," applied to compensation money payable under the Crown Acquisition of Lands Ordinance and ordered that the said sum be paid to the Native Land Trust Board thereunder. The appellant appealed.

LORD TUCKER, giving the judgment, said that little assistance was to be obtained from the citation of authorities with regard to the meaning of "disposition" in other contexts, but in *Kirkness* v. *John Hudson & Co., Ltd.* [1955] A.C. 696 it was recognised that in the field of compulsory acquisition of land such words as "sale" and "purchase" were frequently used in connection with transactions where the element of mutual assent was absent. Once the conclusion was reached that "other disposition" did not exclude a disposition which resulted from compulsory acquisition the presence of the words "purchase money" without the addition of the words "or compensation" presented little difficulty. Their lordships agreed with the conclusion reached by the Court of Appeal on the construction of s. 15. In disposing of the money the better course for the Board would be to follow the relevant statutory regulations in force in Fiji in the light of local native customary tenure without reference to cases which had arisen in other jurisdictions. The provisions in s. 3 (2) of the Native Land (Leases and Licences) Regulations that, unless the Board otherwise decided, the purchase money was to be distributed in the same manner as rents and premiums, would seem to be illogical having regard to the nature of the tenure by a Tokatoka, and it might be considered whether some amendment of the regulations was not desirable. Appeal dismissed. The appellant must pay the intervener's costs of the petition for leave to intervene and one set of costs of the appeal to be shared between the first respondent and the intervener as to one-third to the first respondent and two-thirds to the intervener.

APPEARANCES: *Phineas Quass*, Q.C., and *T. O. Kellock* (*Graham Page & Co.*); *D. A. Grant* (*Charles Russell & Co.*); *B. Gillis*, Q.C., and *William Denny* (*Hy. S. L. Polak & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[2 W.L.R. 755**

House of Lords

GRINDING OPERATIONS: PNEUMOCONIOSIS

Quinn *v.* Cameron & Roberton, Ltd.

Viscount Simonds, Lord Oaksey, Lord Morton of Henryton, Lord Cohen and Lord Keith of Avonholm

14th March, 1957

Appeal from the First Division of the Court of Session ([1957] S.L.T. 2).

The Grinding of Metals (Miscellaneous Industries) Regulations, 1925, include the following definitions: "'Grindstone' means a grindstone composed of natural or manufactured sandstone . . . 'Abrasive Wheel' means a wheel manufactured of bonded emery or similar abrasive. 'Grinding' means the abrasion, by aid of mechanical power, of metal . . . by means of a grindstone or abrasive wheel." By reg. 1: "No racing, dry grinding, or glazing ordinarily causing the evolution of dust into the air of a room in such a manner as to be inhaled by any person employed shall be performed without the use of adequate appliances for the interception of the dust as near as possible to the point of origin thereof, and for its removal and disposal . . . and for the purposes of this regulation the appliances shall not be deemed adequate unless they either include (*a*) a hood or other appliance, so constructed . . . as substantially to intercept the dust thrown off; and (*b*) a duct of adequate size . . . and (*c*) a fan or other efficient means of producing a draught sufficient to extract the dust . . ." In the appellant Quinn's action against the respondent company (Cameron & Roberton, Ltd.) for damages on the allegation that he suffered from pneumoconiosis and that the disease was either caused or aggravated by the fault of the company, his case was based on fault at common law and on an alleged breach of a duty said to have been imposed by the Grinding of Metals (Miscellaneous Industries) Regulations, 1925. The appellant was a grinder employed at the respondent's foundry at Kirkintilloch, where iron castings were cast in sand in moulding boxes. After most of the sand had been removed the remaining sand and superfluous metal excrescences were removed in the dressing shop by a grinding machine, either a "high-speed buff" or a "plough buff." The former was used for lighter castings which were brought to the machine and pressed against the revolving stone; it was equipped with apparatus to draw off the dust evolved. The latter consisted of a frame suspended from a radial arm hinged at one end to a fixed vertical girder. The frame contained a carborundum grinding wheel driven by an electric motor. The plough buff was used for larger castings. It was not equipped with apparatus to draw off the dust evolved. The appellant operated both types of buff. The Court of Session having dismissed the action the appellant appealed to the House of Lords.

VISCOUNT SIMONDS said that the Lord Ordinary who first tried the case and the judges of the First Division were unanimously of opinion that on the facts negligence at common law had not been proved and his lordship was not prepared to differ from them. It was contended by the respondents that the operation was "cleaning of castings" and not "grinding," and that therefore reg. 1 did not apply. But the two were not mutually exclusive. The respondents also contended that the operation did not fall within reg. 1 on the ground that the wheel was neither a "grindstone" nor an "abrasive wheel," as defined. The point was not sound. Clearly it was not a "grindstone," for it was not composed of sandstone. It was made of carborundum, a silicon carbide, which was in some way bonded, and it had an abrasive function. It had never been doubted that it fell within reg. 1. The next question was whether the respondents had been guilty of a breach of reg. 1. There was no intercepting appliance at all. It was established that heavy particles of dust were flung off horizontally to the back of the frame of the buff, but that lighter particles, including the dangerous invisible particles, of silica dust rose vertically into the air. It was evolved into the air and was liable to be inhaled by a person employed in the shop. To it the appellant was continuously exposed in greater or less degree, and it was against this

dust that the respondents did not provide any safeguards whatever. The respondents were guilty of a breach of the regulations. It was irrelevant whether there was any effective or practical remedy and, if so, whether the respondents knew or ought to have known of it. On the question whether the appellant had established a causal connection between the breach and the damage suffered by him, *post hoc, ergo propter hoc* was a fallacy, as it was in respect of any other event in life. The question was whether the evidence showed a material contribution to the atmospheric conditions to which the illness was due or by which it was aggravated. A contribution was material unless the maxim *de minimis non curat lex* could be applied. On the evidence the appellant proved a relevant causal connection between the respondents' breach and his own disease. The appeal should be allowed.

LORD OAKSEY agreed.

LORD MORTON OF HENRYTON dissented. The wheel must be of sandstone or emery or abrasive material similar to bonded emery. "Similar" indicated an abrasive with some quality as a material which it possessed in common with bonded emery. In the absence of expert evidence it could not be said whether carborundum possessed any such qualities.

LORD COHEN and LORD KEITH OF AVONHOLM agreed that the appeal should be allowed. Appeal allowed.

APPEARANCES: *Stott*, Q.C., and *A. Johnson* (both of the Scottish Bar) (*W. H. Thompson*, for *Donald Shaw & Co., S.S.C.*, Edinburgh); *Shearer*, Q.C., and *Emslie* (both of the Scottish Bar) (*Beveridge and Co.*, for *Campbell, Smith, Mathison & Oliphant*, W.S., Edinburgh, and *Briggart, Lumsden & Co.*, Glasgow).

[Reported by F. H. COWPER, Esq., Barrister-at-Law] [2 W.L.R. 692

Court of Appeal

PROFITS TAX: INVESTMENT COMPANY: DIRECTION BY SPECIAL COMMISSIONERS: COMPUTATION OF COMPANY'S ACTUAL INCOME

R. *v.* Income Tax Special Commissioners; *ex parte* Linsleys (Established 1894), Ltd.

Jenkins, Morris and Sellers, L.JJ. 6th March, 1957

Appeal from the Divisional Court ([1956] 3 W.L.R. 854; 100 SOL. J. 840).

The Special Commissioners of Income Tax appealed from an order of mandamus made by the Divisional Court whereby they were ordered to give a direction under ss. 245 and 262 of the Income Tax Act, 1952, in respect of the period 6th April to 7th May, 1953, in relation to a company which went into voluntary liquidation on the latter date. The effect of such a direction (which the company contended the Special Commissioners were bound to make under the mandatory provisions of s. 262) would be (*a*) to make the actual income of the company from all sources for the relevant period apportionable amongst its members for sur-tax purposes; and (*b*) to give under s. 31 (3) of the Finance Act, 1947, a right of election exercisable jointly by the company and any of its members other than individuals (that is, bodies corporate as distinct from natural persons) which if exercised would operate to relieve the company from a substantial liability in respect of profits tax, while on the other hand rendering apportionable amongst its members for sur-tax purposes the income which, but for the election, would have been absorbed by the profits tax. The Special Commissioners contended that even if (which they denied) the company was an investment company within the meaning of s. 262 at the relevant time the Special Commissioners had no power to give the direction in question, because s. 68 (1) of the Finance Act, 1952, required them, in computing the company's actual income from all sources for the purposes of s. 262, to make a deduction in respect of the profits tax liability which, when made, had the effect of reducing such actual income to a minus quantity. There was thus no income in respect of which any deduction or apportionment could be given or made, and the mandatory terms of s. 262 could not be construed as obliging the Special Commissioners to give a direction or make an apportionment in respect of non-existent income. Accordingly, as no direction or apportionment could be given or made, the right of election conferred by s. 31 (3) of the Finance Act, 1947, could never be exercisable; for that right of election only arose when there had been a direction and apportionment.

JENKINS, L.J., delivering the reserved judgment of the court, said that it was vital to the company's contention that the company should be held to be an "investment company" within the meaning of s. 262 of the Income Tax Act, 1952, for it was only in relation to companies of that character that the Special Commissioners were enjoined in mandatory terms to give a direction of the nature sought. The Attorney-General, for the Special Commissioners, presented a subsidiary argument to the effect that the company was not an investment company within s. 262, but without prejudice to that subsidiary contention the court proposed to deal with the main arguments in the case on the assumption that it was, reserving for later examination the Attorney-General's submission to the contrary. For convenience of discussion the court proposed to term a company to which s. 245 of the Income Tax Act, 1952, applied, but which was not an investment company, "a 245 company"; and a company to which that section applied and which was an investment company, "a 262 company." The first matter for determination was the time at which the actual income from all sources of a 245 company or a 262 company did, within the meaning of s. 68 (1) of the Finance Act, 1952 "fall to be computed" under para. 6 of Sched. I to the Finance Act, 1922, or s. 255 (3) of the Income Tax Act, 1952, for it was only when the income of the company concerned did fall to be so computed that the deduction in respect of profits tax was to be made. In their judgment the actual income from all sources of the company within the meaning of s. 68 (1) of the Finance Act did not "fall to be computed" until a direction was actually given, and in this respect there was no distinction to be drawn between a 245 company and a 262 company. It followed in the present case that since there was actual income of the company from all sources for the relevant period in respect of which the Special Commissioners could give a direction under s. 262 (1) of the Income Tax Act, 1952, then in view of the mandatory terms of the subsection they were clearly bound to give it. On this footing it seemed to the court impossible, once the Special Commissioners had given the direction which in the court's view they were bound to give, to hold that the profits tax in respect of which the commissioners sought to make the deduction in s. 68 (1) of the Finance Act, 1952, was "payable" within the meaning of that subsection. Once the direction was given (and for the present purpose it should be treated as having been given) the way was clear for an exercise of the right of election conferred by s. 31 (3) of the Finance Act, 1947. This sufficed, in their lordships' judgment, to dispose of the appeal, subject to the Attorney-General's submission to the effect that the company was not at the material time an investment company within the meaning of s. 262 of the Finance Act, 1952. But in their view if their lordships were right in thinking that the other submissions of the Attorney-General failed, this final submission necessarily failed also. Accordingly, the appeal would be dismissed. Appeal dismissed. Leave to appeal to the House of Lords.

APPEARANCES: *Sir Reginald Manningham-Buller*, Q.C., A.-G., *Sir Reginald Hills*, *E. B. Stamp* and *Alan Orr* (*Solicitor of Inland Revenue*); *Cyril King*, Q.C., and *H. H. Monroe* (*Smith & Hudson*, for *Rollitt, Farrell & Bladon*, Hull).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [2 W.L.R. 654

QUARTER SESSIONS: INFERENCES FROM FACTS FOUND: WHETHER ERROR IN LAW: RIGHT OF WAY

Chivers & Sons, Ltd. *v.* Cambridge County Council

Trustees of the National Institute of Agricultural Botany Registered *v.* Cambridge County Council

Lord Evershed, M.R., Morris and Ormerod, L.JJ.
13th March, 1957

Appeals from the Divisional Court.

The Cambridge County Council prepared a provisional map in accordance with the requirements of the National Parks and Access to the Countryside Act, 1949, on which was shown a public footpath running from one highway to another across the land of the two applicants. The applicants applied under s. 31 (7) of the Act of 1949 to quarter sessions for a declaration that at the relevant date there was no public right of way over the footpath in question. Quarter sessions found that the footpath had been dedicated as a highway at common law at some time before 1899,

and stated a case for the opinion of the court, the points of law being, first, whether there was any evidence to support their conclusion; and, secondly, whether, on the facts found by them, regarded as a whole, they were entitled in law to hold that there was at the relevant date a public right of way over the footpath. The applicants contended, first, that there was no evidence to support the conclusion that the footpaths had been dedicated as highways and, secondly, that, having regard to the provisions of s. 25 (1) and (2) of the Supreme Court of Judicature (Consolidation) Act, 1925, the Divisional Court and the Court of Appeal were as free as quarter sessions to draw inferences of fact and inferences of fact different from those of quarter sessions. The Divisional Court dismissed the applicants' appeal.

LORD EVERSHED, M.R., delivering the reserved judgment of the court, said that there was evidence on which quarter sessions could find that there was a public right of way over the footpath in question. As to the second question, assuming that the present appeal was an " appeal " within s. 25 (1) and (2) of the Supreme Court of Judicature (Consolidation) Act, 1925, all that the decided cases established was that where quarter sessions had been shown to have misdirected itself so as to disable the conclusion which it had reached, then the High Court (and the Court of Appeal) could by virtue of s. 25, and in order to reach the proper conclusion in the case, draw any necessary inference of fact. Accordingly, the question to be determined in the present case was whether, on the basis of the facts found, quarter sessions were entitled in law to reach their final conclusion; that was, not whether they were entitled to draw further inferences of fact, but whether the conclusion proceeding from the unchallengeable findings of " primary " fact could be said to have involved some misdirection or error of law. Since, however, the inference of an intention to dedicate did not, *per se*, involve an error of law the appeals must be dismissed. Appeals dismissed.

APPEARANCES: *G. D. Squibb*, Q.C., and *David Hirst* (*Blyth, Dutton, Wright & Bennett*, for *King, Metters & Harrison*, Cambridge); *David Hirst* (*Blyth, Dutton, Wright & Bennett*, for *Few & Kester*, Cambridge); *F. Donald McIntyre*, Q.C., and *W. H. Hughes* (*Charles Phythian*, Clerk to Cambridge County Council).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [2 W.L.R. 646

INCOME TAX: SCHEDULE A: FLATS FORMING PART OF SINGLE BUILDING: WHETHER ASSESSMENT ON LANDLORD OR TENANT

Gatehouse *v.* Vise (Inspector of Taxes)

Lord Goddard, C.J., Jenkins and Sellers, L.JJ.
22nd March, 1957

Appeal from Danckwerts, J. ([1956] 1 W.L.R. 1509; 100 SOL. J. 927).

Rule 8 (*c*) of No. VII of Sched. A to the Income Tax Act, 1918, provides: " The assessment and charge shall be made upon the landlord in respect of—. . . (*c*) any house or building let in different apartments or tenements, and occupied by two or more persons severally. Any such house or building shall be assessed and charged as one entire house or tenement." Rule 12 provides: " Where a house is divided into distinct properties, and occupied by distinct owners or their respective tenants, such properties shall be separately assessed and charged on the respective occupiers thereof." The taxpayer, who was the tenant of a flat in Knightsbridge, appealed against an assessment on him as occupier for the year 1951–52 under Sched. A to the Income Tax Act, 1918, in the sum of £201. The ground floor of the property in question comprised four garages. On the first floor there were five flats, of which the taxpayer occupied flat No. 3. The occupier of each of the five flats was the immediate tenant of a common landlord. There was no means of communication through the garages to the first floor. The only means by which access could be obtained to the flats was by one of two common staircases and along a balcony, on which the front door of each flat opened. The landlord was responsible for the repair of the balcony and the staircases. Under the terms of the lease relating to the flat in question the lessee paid the sum of £2,750, and agreed to pay the annual sum of £1 payable on 24th June in each year for a term of twenty-two years from 25th December, 1950 (less the last three days). The taxpayer claimed that under the rules relating to Sched. A the assessment should have been made not on him but on the landlord. The general commissioners found that the flat was part of a single house or building, but accepted the contention of the inspector of taxes that r. 12 of No. VII of Sched. A applied, and, accordingly, they confirmed the assessment. On appeal to Danckwerts, J., the assessment was discharged on the ground that it should have been made on the landlord under r. 8 (*c*). The Crown appealed.

JENKINS, L.J., delivering the first judgment, said that it had been contended for the Crown that, in circumstances such as those of the present case, where a house was divided into two or more distinct flats severally occupied by the immediate tenants of a common landlord who owned the entire house, the occupying tenant of each flat was, within the meaning of r. 12, a distinct owner occupying one of the distinct properties into which the house was divided if the lease under which the tenant held reserved less than a rack-rent, but not if the lease under which he held reserved a rack-rent. He (his lordship) could find nothing in the language of r. 12 to support this distinction. Moreover, this construction of r. 12 was contrary to the views expressed in *A.-G.* v. *Mutual Tontine Westminster Chambers Association, Ltd.* (1876), L.R. 1 Ex. D. 469. That case was concerned with the inhabited house duty and not with income tax. Nevertheless it appeared to him to provide powerful support for counsel's argument for the taxpayer in the present case. Accordingly, in his (his lordship's) judgment, inasmuch as the five flats in the present case were now respectively occupied by the immediate tenants of a common landlord owning a leasehold interest which comprised the entire building, the case as matters now were fell within r. 8 (*c*). The appeal failed and must be dismissed.

SELLERS, L.J., and LORD GODDARD, C.J., delivered concurring judgments. Appeal dismissed.

Leave to appeal to the House of Lords.

APPEARANCES: *Cyril King*, Q.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*); *F. N. Bucher*, Q.C., and *H. H. Monroe* (*Alexander Rubens & Co.*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [2 W.L.R. 672

INTERVENTIONS BY JUDGE HELD EXCESSIVE

Jones *v.* National Coal Board

Denning, Romer and Parker, L.JJ. 25th March, 1957

Appeal from Hallett, J.

A coalminer working at the coal face was killed by a fall of roof. Some weeks before the accident there had been a previous fall at that point and conditions had not been completely restored to normal. The widow brought an action for damages against the National Coal Board alleging, *inter alia*, breaches of statutory duty under s. 49 of the Coal Mines Act, 1911, and rules made thereunder, and also negligence at common law, in that the board, by using props and not using chocks, had failed to take proper steps to support the place where the dead man had been working. The board denied liability and in turn relied on s. 102 (8) of the Act of 1911 to excuse them from liability for the alleged breaches of statutory duty. At the trial of the action, the trial judge intervened during the evidence for the plaintiff in order to understand the technicalities. During the evidence for the defendant board the judge intervened frequently, both during examination-in-chief and during cross-examination, at times conducting the examination of a witness himself, at times interrupting cross-examination to protect a witness against questions which he considered misleading, the nature and extent of his interventions being such as to break the sequence of question and answer. On the issue of chocks in particular the judge, in effect, stopped cross-examination. He gave judgment for the board on all the matters in issue. The plaintiff appealed against that decision on the ground that she had not had a fair trial. After the issues as to liability had been fully canvassed on the basis of the transcript of the evidence, the documents, and the relevant statutory provisions and authorities, the board sought and obtained leave to give notice of cross-appeal on the same ground, namely, that there had not been a fair trial.

DENNING, L.J., reading the judgment of the court, said that justice could only be done if the court was satisfied that the primary facts had been properly found by the judge on a fair trial between the parties. Though the judge here had been actuated by the best motives, the court was clear that his interventions, taken together, were far more than they should have been. The judge's part in a civil dispute was to hearken to the evidence, only asking questions of witnesses when it was necessary to clear up any point; to see that advocates behaved themselves seemly and kept to the rules laid down by law; to exclude irrelevancies and discourage repetition; to make sure by wise

intervention that he followed the points made by the advocates and could assess their worth; and at the end to make up his mind where the truth lay. In particular, though a judge was not only entitled but bound to intervene at any stage of a witness's evidence in order properly to follow and appreciate what a witness was saying, such interventions should be as infrequent as possible when the witness was under cross-examination, for it was only by cross-examination that such evidence could be tested, and it lost much of its effectiveness if the witness was given time to think out the answer to awkward questions; the very gist of cross-examination lay in the unbroken sequence of question and answer. The court was reluctantly constrained to hold that the submission that the extent of the judge's interruptions was such that counsel for the plaintiff had been unduly hampered in his task of probing and testing the evidence for the defendants was well founded. In the result, the court had not before it sufficient primary facts to pronounce on the issues as to liability and the only thing to do was to order a new trial. The appeal should be allowed accordingly. Appeal allowed. New trial ordered.

APPEARANCES: *Gerald Gardiner*, Q.C., and *W. L. Mars-Jones* (*Jaques & Co.*, for *Cyril Jones, Son & Williams*, Wrexham); *Edmund Davies*, Q.C., and *H. Emlyn Hooson* (*Donald H. Haslam*, for *P. E. Lissant*, Manchester).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[2 W.L.R. 760**

Chancery Division

RESTRICTIVE COVENANT: COVENANT TO MAINTAIN LAND AS PUBLIC PARK: ENFORCEABILITY

***In re* Freeman-Thomas Indenture**
***In re* Ratton Estate**

Harman, J. 29th January, 1957

Adjourned summons.

A conveyance of 82 acres of land, executed in 1901 by *F* and others, to a local authority, to which Settled Land Act trustees also were parties, contained covenants by the local authority to maintain the land as a public park or common only. By 1956 the land had become increasingly surrounded by small houses: and the authority was minded to build a grammar school on part of it. The title deeds had never been handed over to a purchaser but had remained with the vendor's solicitors, and the contemporary representative of the family of *F* was not interested. The corporation issued, under s. 84 (2) of the Law of Property Act, 1925, a summons to a number of respondents, none of whom entered appearances, for a declaration that the restrictive covenants no longer affected the land and were no longer enforceable by anyone.

HARMAN, J., said that in the circumstances it was impossible to say that there was anyone now in a position to enforce the covenants, and if they were binding the corporation would be prevented from ever getting consent to build. The corporation had joined a large number of persons none of whom had entered appearances or made a move to respond and there was no one else who could have any real interest in the matter. The powers of the court were discretionary and his lordship proposed to use them in order to quieten possible objections which might be raised by people who had not chosen to come forward, but might like to cherish a grievance thereafter. Accordingly, he proposed to make a declaration that the property was not affected by the restrictions imposed by the instrument, nor were they enforceable by anyone. Declaration accordingly.

APPEARANCES: *G. H. Newsom*, Q.C., and *Lionel Abel-Smith* (*Sharpe, Pritchard & Co.*, for *Town Clerk*, Eastbourne).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [1 W.L.R. 560

NOTE

County Laboratories, Ltd. *v.* J. Mindel, Ltd.

Harman, J. 26th March, 1957

The order dismissing the interlocutory motion for an injunction (*ante*, p. 286) not having been drawn up and the parties having reached a settlement, this action was mentioned to his lordship. By consent the motion was treated as trial of the action and, the defendants undertaking not to sell by retail any articles manufactured or distributed by the plaintiffs below the current fixed retail selling price, all further proceedings in the action were stayed.

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[2 W.L.R. 746**

Queen's Bench Division

SHIPPING: CHARTERPARTY: DELAY IN FULFILLING OBLIGATIONS: BREACH OF WARRANTIES: LENGTH OF DELAY JUSTIFYING RESCISSION: PROPER TEST

Universal Cargo Carriers Corporation *v.* Citati

Devlin, J. 12th March, 1957

Case stated by arbitrator.

By a charterparty dated 30th June, 1951, a ship was chartered to load a cargo at Basra for carriage to Buenos Aires. She arrived on 12th July, 1951, but as by that time the owners' agent had found it impossible to contact the shipper she was sent to the buoys where she remained until 18th July. By that date no berth had been nominated and no cargo provided and the owners cancelled the charter although the laydays did not expire until 21st July. The owners contended before an arbitrator, in a claim for damages for breach of the charterparty, that the cancellation was justified as (1) the charterer had committed breaches of conditions of the charterparty, and (2) that he had by his conduct evinced an intention not to perform it and thus committed an anticipatory breach. The arbitrator found that there was a failure by the charterer to nominate a shipper but that that was a breach of warranty only; but he concluded that the charterer had by his conduct on 18th July evinced an intention not to perform the charter-party and made an interim award on liability in favour of the owners. The charterer appealed.

DEVLIN, J., said that the question was: How long was a ship obliged to remain on demurrage and what were the rights of the owner if the charterer detained her too long? Where time was not the essence of the contract—when delay was only a breach of warranty—how long must the delay last before the aggrieved party was entitled to throw up the contract. The theoretical answer was, when the delay became so long as to go to the root of the contract and amount to repudiation. The difficulty lay in the application, for it was hard to say where fact ended and law began. Both parties were agreed that 18th July was the crucial date. It was not necessary to decide whether the nomination of a shipper was a term of the charterparty as the arbitrator had found that on 18th July the cargo could not possibly have been loaded in the laytime remaining. It must follow that by 18th July the time for providing a cargo and nominating a berth had expired and he held that the charterer broke those terms. Although on 18th July the laydays had not expired the charterer had by his dilatoriness put it out of his power to comply with the term that he must complete loading by 21st July. But none of the breaches committed by the charterer was a breach of condition and the owners were not entitled, *ipso facto*, to rescind. But a party to a contract might not purchase indefinite delay by paying damages and a charterer might not keep a ship indefinitely on demurrage. When the delay became so prolonged that the breach became so grave as to go to the root of the contract the aggrieved party was entitled to rescind. The yardsticks for measuring the delay considered in the arbitration were two: first, the conception of reasonable time, and, secondly, such delay as would frustrate the charterparty. The arbitrator had preferred the first. But the second had been settled as the correct one by a long line of authorities. The next question for determination was whether the charterer on 18th July, 1951, was willing and able to load the cargo within such time as would not have frustrated the object of the venture? The answer to that question would have determined the case. But the main argument in the arbitration was on anticipatory breach and the emphasis on one mode of it, renunciation. The chief findings of the arbitrator related entirely to renunciation. The law on the right to rescind had been stated by Lord Porter in *Heyman* v. *Darwins, Ltd.* [1942] A.C. 356 where the two modes of anticipatory breach were set out (1) renunciation by a party of his liabilities under a contract; (2) impossibility created by his own act. The arbitrator had found an anticipatory breach, but that finding must have been based on an erroneous concept of the length of delay necessary to amount to repudiation; and so the finding could not stand. That meant that the owners failed on renunciation and must rely on the other mode of anticipatory breach. If they could prove that the charterer had in fact on 18th July wholly and finally disabled himself from performing the charterparty, whether that disablement was deliberate or not, they were entitled to succeed,

but there were no facts found by the arbitrator which would enable them to argue that point and therefore the charterer must succeed on the case as it stood, subject to the owners' application that the case should be remitted for a specific finding of fact. He had come to the conclusion that the owners ought not to be barred altogether from the taking the point and they could now be allowed to do so without injustice to the charterer. He would extend the time for the application to be made. The charterer must have the costs of the hearing. If the further finding of fact was in the charterer's favour the award would stand.

APPEARANCES: *A. A. Mocatta*, Q.C., and *Michael Kerr* (*Holman, Fenwick & Willan*); *Ashton Roskill*, Q.C., and *H. V. Brandon* (*Constant & Constant*).

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law] **[2 W.L.R. 713**

NEGLIGENCE: INJURY TO WORKMAN FROM TOOL WITH LATENT DEFECT: LIABILITY OF EMPLOYER AND MAKER

Davie *v.* New Merton Board Mills, Ltd.

Ashworth, J. 14th March, 1957

Action.

The plaintiff, a maintenance fitter, was knocking out a metal key by means of a drift and hammer when, at the second blow of the hammer, a particle of metal flew off the head of the drift and into his eye, causing injuries. The drift, which had been provided for the plaintiff's use by his employers, although apparently in good condition, was of excessive hardness, and was in the circumstances a dangerous tool; it had been negligently manufactured by reputable makers, who had sold it to a reputable firm of suppliers, who in turn had sold it to the employers. The plaintiff claimed damages for negligence against his employers on the ground that they had supplied him with a defective tool, and against the makers on the ground that, as the manufacturers of the drift, they were under a duty to those whom they contemplated might use it. The makers contended that as the plaintiff had not used the drift with the socket for which it was designed it had not been used in the manner for which it had been supplied and, therefore, they were not liable.

ASHWORTH, J., in a reserved judgment, said that, notwithstanding the decision in *Mason* v. *Williams & Williams, Ltd.* [1955] 1 W.L.R. 549, the authorities to which he had been referred constrained him to hold the employers liable. Lord Wright said in *Thomson* v. *Cremin* [1956] 1 W.L.R. 103, 110: "The duty of the invitor towards the invitee is, in my opinion, a duty personal to the former, in the sense that he does not get rid of the obligation by entrusting its performance to independent contractors. It is true that the invitor is not an insurer: he warrants, however, that due care and skill to make the premises reasonably safe for the invitee have been exercised, whether by himself, his servants, or agents or by independent contractors whom he employs to perform his duty. He does not fulfil the warranty merely by leaving the work to contractors however reputable or generally competent. His warranty is broken if they fail to exercise the proper care and skill." It was true that Lord Wright was there dealing with the position of an invitor, but the duty of an employer to his workmen was certainly no less. Further, while the employers were unaware of any defect in the drift, and could not reasonably have discovered it, the defect was not latent so far as the makers were concerned. If the employers were to escape on the ground that the defect was latent, they would need to establish that it was latent in regard to the makers, and this they had failed to do. While accepting the contention that use of an article for a purpose materially different from that for which the maker designed it or which he might reasonably be taken to have contemplated might afford him an answer to a claim founded on the article's dangerous or defective condition, such an answer was not available to the makers in the present case. The use of the drift by the plaintiff was not so foreign to the use intended or contemplated as to absolve the makers from liability. The use for a different, albeit similar, purpose did not, *ipso facto*, free the makers from liability. Judgment for the plaintiff against both defendants.

APPEARANCES: *Martin Jukes*, Q.C., and *Malcolm Morris* (*W. H. Thompson*); *Tudor Evans* (*E. P. Rugg & Co.*); *Norman Richards*, Q.C., and *Michael Hoare* (*Doyle, Devonshire & Co.*, for *Kershaw, Tudor & Co.*, Sheffield).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[2 W.L.R. 747**

Probate, Divorce and Admiralty Division

DIVORCE: DESERTION: ADULTERY PRIOR TO INCEPTION OF DESERTION

Day *v.* Day

Willmer, J. 8th March, 1957

Undefended petition by husband for divorce on the ground of desertion. The assistance of the Queen's Proctor in argument was invoked.

The husband, who had left his wife in 1943 in circumstances amounting to a consensual separation, committed two acts of adultery in 1944 and informed his wife, who took, however, no steps to divorce him. In May, 1953, he made a bona fide offer of a reconciliation which was rejected. It was held that at no time did the wife object to the adultery (which was the only adultery committed) nor did any question of connivance or misconduct conducing, or of condonation, arise. On the husband's undefended petition for divorce on the ground of desertion since 1953 it was contended on behalf of the Queen's Proctor that there was a fundamental difference between adultery committed before the inception of alleged desertion (whether or no that adultery were known to the other spouse, or that spouse sought to rely on it as just cause), and adultery committed during its continuance. In the latter case the matrimonial offence of desertion was already current, and the only question could be as to whether the continuance of desertion was affected; but in the former case the question arose whether desertion could ever be alleged without asserting a duty on the part of the alleged deserter to cohabit with a spouse who *ex hypothesi* had been guilty of adultery. By s. 1 (1) (*b*) of the Matrimonial Causes Act, 1950, "... a petition for divorce may be presented ... on the ground that the respondent has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition." *Cur. adv. vult.*

WILLMER, J., reading his judgment, said that the facts raised in the neatest possible form a question which went to the root of the law relating to desertion, and about which there appeared to be no direct authority—namely, whether a spouse, who had admittedly been guilty of the matrimonial offence of adultery prior to the inception of the alleged period of desertion, could ever successfully plead that the other spouse had been guilty of desertion without cause, notwithstanding that that other spouse did not seek to rely on the adultery as just cause for the separation. The question appeared to be one of such fundamental importance that the assistance of the Queen's Proctor had been invoked. In the case of adultery committed by a petitioner after he or she had been deserted, it was well settled that the desertion was not necessarily terminated as a matter of law (*Herod* v. *Herod* [1939] P. 11). The argument for the petitioner in this case had been that precisely the same considerations applied to adultery committed before the inception of desertion as applied to adultery such as was in question in *Herod* v. *Herod*, *supra*. It was fair to say that until now that had been the generally accepted view, as was shown by the comments of modern textbook editors—see Latey on Divorce (14th ed., p. 173) and Rayden on Divorce (6th ed., pp. 138–139, particularly note (*a*)). Moreover, it was clear that that was the view of Lord Merriman, P., when he decided *Herod v. Herod*, as was shown by some remarks which he made *obiter* in the course of his judgment in that case ([1939] P., at p. 24). That view gained further support from some remarks made by du Parcq, L.J., in *Williams* v. *Williams* [1943] 2 All E.R. 746, 751. But it had been argued on behalf of the Queen's Proctor that there was a fundamental difference in principle between adultery committed before the inception of the alleged desertion and that committed during its continuance. In the latter case one started with the matrimonial offence of desertion already current and the only question could be as to whether its continuance was affected by the subsequent adultery. In the former case the question arose whether a charge of desertion could ever be alleged without asserting a duty on the part of the alleged deserter to continue cohabitation with a spouse who *ex hypothesi* had been guilty of adultery. Was the situation altered upon proof that the alleged deserting spouse did not know of the adultery, or that his or her mind was not in fact affected thereby? Even so, he or she could not continue to cohabit with, or (in the case of spouses already separated) could not take back, the adulterous spouse without condoning the adultery. Yet, on the petitioner's argument,

that was precisely what he or she must do in order to avoid being held a deserter. It was submitted on behalf of the Queen's Proctor that one spouse could not set up a case of desertion against the other, if he or she had been guilty, himself or herself, of antecedent, uncondoned adultery, notwithstanding that the other spouse did not know of such adultery or did not seek to rely on it as affording just cause. He (his lordship) said that it was not without hesitation that in the end he had found himself unable to accede to those contentions. But he was not prepared to differ from the views expressed by Lord Merriman, P., and by du Parcq., L.J., in the cases to which he had already referred, or to hold that there was any distinction in principle between adultery committed prior to the inception of the desertion alleged and adultery committed during the continuance of desertion already current. Apart from the weight which must naturally be attached to those *dicta* he would arrive at the same conclusion as a matter of construction of the words of s. 1 (1) of the Matrimonial Causes Act, 1950: a petition for divorce may be presented "on the ground that the respondent . . . (*b*) has deserted the petitioner without cause . . ." The statute made no distinction between cause in relation to the inception of desertion and cause in relation to its continuance. In either case the question to be decided was whether the desertion was without cause. On the wording of the statute the inquiry as to whether there was cause must be the same, whether the petitioner's adultery had been committed before the inception or during the continuance of the desertion complained. So far as the wording of the statute was concerned, therefore, there was no distinction between adultery before and adultery during the currency of the desertion alleged. If the petitioner had by his own misconduct—be it adultery or cruelty—caused the desertion of which he sought to complain, either in its inception or in its continuance, then clearly he could not bring himself within the words of the statute. But if he proved to the satisfaction of the court that his adultery was not the cause of the desertion complained of whether in its inception or in its continuance, *a fortiori* if he could show that its inception or continuance was in fact due to quite other causes, such as would not afford any legitimate excuse—then he brought himself within the statute and was at least entitled to a finding of desertion in his favour. Whether or not he was to obtain relief would then be a matter calling for the exercise of the court's discretion. The burden was on the petitioner to satisfy the court that his adultery was not the cause of the desertion complained of. That involved the husband proving affirmatively that the mind of the wife had not been in any way affected by her knowledge of the husband's adultery. The burden was a heavy one: but in the present case the petitioning husband had discharged it, and the wife was therefore to be found guilty of desertion. Since it was proper to exercise discretion in the husband's favour, there would be a decree *nisi*. His lordship added that although he did not begrudge the husband his relief, he regretted that there would be no opportunity for reviewing his decision in a higher court. But it was inherent in the procedure under s. 10 of the Matrimonial Causes Act, 1950, that the Queen's Proctor did not become a party to the suit, and, accordingly, had no right of appeal. It was unfortunate that, when a question arose of such importance as that which had arisen in this case, no machinery existed, if the decision of this court was in favour of the petitioner, for submitting that decision to the consideration of a higher court. Decree *nisi*.

APPEARANCES: *James Miskin* (*R. H. Marcus, Law Society Divorce Department*); *James Comyn* and *Roger Gray* (*The Queen's Proctor*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[2 W.L.R. 683**

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

Barclays Bank D.C.O. Bill [H.C.]	[4th April.
Cattedown Wharves Bill [H.C.]	[4th April.
City of London (Various Powers) Bill [H.C.]	[4th April.
Croydon Corporation Bill [H.C.]	[3rd April.
Marine Society Bill [H.C.]	[4th April.
Rent Bill [H.C.]	[2nd April.
Sunderland Corporation Bill [H.C.]	[4th April.

Read Second Time :—

Finsbury Square Bill [H.L.] [4th April.

Read Third Time :—

House of Commons Disqualification Bill [H.C.] [4th April.

Public Health Officers (Deputies) Bill [H.C.] [4th April.

In Committee :—

White Fish and Herring Industries (No. 2) Bill [H.C.] [4th April.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

House of Commons Members' Fund Bill [H.C.] [3rd April.

To authorise the payment out of moneys provided by Parliament of annual contributions towards the House of Commons Members' Fund and to extend the powers of investment of the trustees of that Fund.

Read Third Time :—

Cinematograph Films Bill [H.L.]	[2nd April.
Electricity Bill [H.C.]	[4th April.

B. QUESTIONS

SALE OF FOOD (OVERCHARGING AND WEIGHING)

Asked whether he was aware that the practice of overcharging on proportions of food over the 1 lb. marked on the scale did not constitute an offence on which to base a prosecution, the PARLIAMENTARY SECRETARY TO THE BOARD OF TRADE said that representations which had been made to the Board of Trade by the county councils and inspectors in connection with proposed new legislation on weights and measures had included comments on such malpractices. His department had promised to consider these when preparing the Bill. [2nd April.

PRIVATE STREET WORKS (LEGISLATION)

Mr. H. BROOKE said that the consolidation of private streets legislation was being considered in connection with the larger question of consolidating the general law relating to highways, streets and bridges. [2nd April.

PREVENTIVE DETENTION REPORTS (INTERVIEWS)

Asked whether he would issue instructions to ensure that prisoners who were interviewed for the purpose of compiling preventive detention reports by the Prison Commissioners were warned beforehand of the purpose of the interview and the fact that the information might be published, the HOME SECRETARY said that it was in the best interests of the prisoner that the court should have the fullest information about his circumstances, including in some cases his domestic circumstances, because they might be relevant to the sentence. He was anxious, while being fair to the prisoner, not to discourage him from giving the interviewing officer all relevant information. He was not, therefore, convinced that the suggestion made was the right answer, but was studying the problem. He was also studying the question of the possibility of defamatory statements being excluded from the reports when they were to be published. [4th April.

JUSTICES OF THE PEACE (EXPENSES)

Asked whether he would bring in legislation to provide expenses and loss of wages to magistrates attending the quarter sessions, the HOME SECRETARY said that justices who necessarily incurred expenses in the performance of their duties were already entitled

to travelling allowance, and if they had to be away from home for a night they could also claim a lodging allowance. The Royal Commission on Justices of the Peace, which reported in 1948, considered proposals that justices should be paid an allowance for loss of time and recommended that they should not. This conclusion had been accepted by Parliament when the Justices of the Peace Act had been passed in 1949 and he still thought that that was the correct conclusion. [4th April.

STATUTORY INSTRUMENTS

Barrow-in-Furness Water Order, 1957. (S.I. 1957 No. 507.) 5d.
Bath - Cheltenham - Evesham - Coventry - Leicester - Lincoln Trunk Road (Thurmaston By-Pass Extension) Order, 1957. (S.I. 1957 No. 545.) 5d.
Bolton Water Order, 1957. (S.I. 1957 No. 538.) 6d.
Colchester Water Order, 1957. (S.I. 1957 No. 552.) 5d.
Colne Valley Water Order, 1957. (S.I. 1957 No. 511.)
Cotton Industry Development Council (Amendment No. 3) Order, 1957. (S.I. 1957 No. 508.)
East Devon Water (Seaton and Beer) Order, 1957. (S.I. 1957 No. 540.) 9d.
East Worcestershire Water Order, 1957. (S.I. 1957 No. 513.) 5d.
Education (Local Education Authorities) Grant Amending Regulations No. 6, 1957. (S.I. 1957 No. 486.)
Falmouth Water Order, 1957. (S.I. 1957 No. 553.) 5d.
Hampshire Police (Amalgamation) Order, 1957. (S.I. 1957 No. 534.) 5d.
Import Duties (Exemptions) (No. 3) Order, 1957. (S.I. 1957 No. 502.) 5d.
Import Duties (Exemptions) (No. 4) Order, 1957. (S.I. 1957 No. 503.) 5d.
Manchester Water Order, 1957. (S.I. 1957 No. 565.) 5d.
Metropolitan Water Board (Water Charges) Order, 1957. (S.I. 1957 No. 537.)
Milk (Great Britain) (Amendment) Order, 1957. (S.I. 1957 No. 514.) 5d.
Milk (Northern Ireland) (Amendment) Order, 1957. (S.I. 1957 No. 515.)
National Health Service (Designation of London Teaching Hospitals) Order, 1957. (S.I. 1957 No. 488.) 6d.
National Health Service (Remuneration and Conditions of Service) Amendment Regulations, 1957. (S.I. 1957 No. 494.) 5d.
National Health Service (Remuneration and Conditions of Service) (Scotland) Amendment Regulations, 1957. (S.I. 1957 No. 506 (S. 26).) 5d.
Newark Corporation Water Order, 1957. (S.I. 1957 No. 539.) 5d.
Newcastle and Gateshead Water Order, 1957. (S.I. 1957 No. 510.) 5d.
Norwich Water Order, 1957. (S.I. 1957 No. 535.) 5d.
Nuneaton Water Order, 1957. (S.I. 1957 No. 517.) 6d.
Road and Rail Traffic Act (Exemption) Regulations, 1957. (S.I. 1957 No. 525.) 5d.
St. Neots Water Order, 1957. (S.I. 1957 No. 555.) 5d.
Smoke Control Areas (Exempted Fireplaces) Order, 1957. (S.I. 1957 No. 541.)
Smoke Control Areas (Exempted Fireplaces) (Scotland) Order, 1957. (S.I. 1957 No. 544 (S. 27).)
Stopping up of Highways (Bristol) (No. 2) Order, 1957. (S.I. 1957 No. 495.) 5d.
Stopping up of Highways (Bristol) (No. 3) Order, 1957. (S.I. 1957 No. 546.) 5d.
Stopping up of Highways (Buckinghamshire) (No. 2) Order, 1957. (S.I. 1957 No. 521.) 5d.
Stopping up of Highways (Cheshire) (No. 4) Order, 1957. (S.I. 1957 No. 499.) 5d.
Stopping up of Highways (Coventry) (No. 1) Order, 1957. (S.I. 1957 No. 522.) 5d.
Stopping up of Highways (Essex) (No. 4) Order, 1957. (S.I. 1957 No. 504.) 5d.
Stopping up of Highways (Exeter) (No. 1) Order, 1957. (S.I. 1957 No. 496.) 5d.
Stopping up of Highways (Kent) (No. 5) Order, 1957. (S.I. 1957 No. 528.) 5d.
Stopping up of Highways (Kent) (No. 6) Order, 1957. (S.I. 1957 No. 547.) 5d.
Stopping up of Highways (London) (No. 20) Order, 1957. (S.I. 1957 No. 529.) 5d.
Stopping up of Highways (London) (No. 21) Order, 1957. (S.I. 1957 No. 530.) 5d.
Stopping up of Highways (London) (No. 22) Order, 1957. (S.I. 1957 No. 531.) 5d.
Stopping up of Highways (London) (No. 23) Order, 1957. (S.I. 1957 No. 526.) 5d.
Stopping up of Highways (London) (No. 24) Order, 1957. (S.I. 1957 No. 532.) 5d.
Stopping up of Highways (Middlesex) (No. 5) Order, 1957. (S.I. 1957 No. 548.) 5d.
Stopping up of Highways (Northamptonshire) (No. 3) Order, 1957. (S.I. 1957 No. 549.) 5d.
Stopping up of Highways (Portsmouth) (No. 3) Order, 1957. (S.I. 1957 No. 523.) 5d.
Stopping up of Highways (Shropshire) (No. 1) Order, 1957. (S.I. 1957 No. 497.) 5d.
Stopping up of Highways (Somerset) (No. 1) Order, 1957. (S.I. 1957 No. 498.) 5d.
Stopping up of Highways (Warwickshire) (No. 6) Order, 1957. (S.I. 1957 No. 533.) 5d.
Stopping up of Highways (Warwickshire) (No. 7) Order, 1957. (S.I. 1957 No. 500.) 5d.
Stopping up of Highways (Warwickshire) (No. 8) Order, 1957. (S.I. 1957 No. 524.) 5d.
Stourbridge and District Water Board Order, 1957. (S.I. 1957 No. 512.) 5d.
Sunderland and South Shields Water Order, 1957. (S.I. 1957 No. 557.) 6d.
Therapeutic Substances Amendment Regulations, 1957. (S.I. 1957 No. 550.) 11d.
Transfer of Functions (Atomic Energy and Radioactive Substances) Order, 1957. (S.I. 1957 No. 561.) 5d.
Winchester Water Order, 1957. (S.I. 1957 No. 536.) 5d.
Wireless Telegraphy (Broadcast Licence Charges) Amendment (No. 1) Regulations, 1957. (S.I. 1957 No. 509.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

Mr. W. H. R. BARKER, solicitor, of Jermyn Street, S.W.1, has been elected chairman of a provisional committee of the London Ratepayers' Association.

Mr. WILLIAM ALAN BELCHER Goss has been appointed deputy chairman of the Court of Quarter Sessions for the West Riding of the County of York.

The Hon. JAMES ROUALEYN HOVELL-THURLOW-CUMMING-BRUCE has been appointed Recorder of the Borough of Doncaster, and Mr. REGINALD WITHERS PAYNE has been appointed Recorder of the Borough of Huddersfield. Mr. Payne has relinquished his Recordership of Pontefract.

Mr. DAVID WILLIAMS, solicitor, of Caernarvon, has been elected Mayor of the Borough of Caernarvon for the ensuing year.

Mr. George Anthony Harrison, solicitor, of Wolverhampton, was married on 30th March to Miss Jane Parry, of Pwllheli.

Mr. John H. Ingham was presented with a silver tea set by the chairman of the council to mark his retirement after thirty-six years as clerk and chief financial officer to Denholme Urban District Council.

Mr. John Frederick Finch Miller, solicitor, of Lowestoft, was married on 23rd March to Miss Mary Jean Wilton, of Lowestoft.

Mr. George William Smith and his elder son Mr. George Geoffrey Smith, of Huddersfield, who have served jointly as clerk and chief financial officer to Kirkburton Urban Council for many years, have resigned owing to the ill-health of Mr. George William Smith.

NOTES AND NEWS

Miscellaneous

DEVELOPMENT PLAN

THE COUNTY BOROUGH OF BIRKENHEAD DEVELOPMENT PLAN

Proposals for alterations or additions to the above development plan were on 15th March, 1957, submitted to the Minister of Housing and Local Government. The proposals relate to land situate at Upton within the County Borough. A certified copy of the proposals as submitted has been deposited for public inspection at the Town Hall, Hamilton Square, Birkenhead, and, together with copies or relevant extracts of the plan, is available for inspection there free of charge by all persons interested, between 9 a.m. and 5.30 p.m. on Mondays to Fridays, and between 9 a.m. and 12 noon on Saturdays. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 1st May, 1957, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Birkenhead Corporation at the Town Clerk's Office, Town Hall, Hamilton Square, Birkenhead, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

THE SOLICITORS ACTS, 1932 TO 1941

On 28th March, 1957, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of LEONARD FRANCIS DODSON, formerly of Cyprus Close, Guildford Road, Fleet, Hants, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

THE SOLICITORS ACTS, 1932 TO 1956

On 28th March, 1957, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1956, that there be imposed upon JOHN GARRARD PAGE, of Council Offices, Erith, Kent, and No. 1 Chester Avenue, Cranham, Upminster, Essex, a penalty of £100 to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

The following is a list of special prizes for the year 1956 awarded by THE LAW SOCIETY: The Scott Scholarship: Michael Jack Goodman, B.A. Oxon. The Broderip Prize for Real Property and Conveyancing: Michael Jack Goodman, B.A. Oxon. The Clabon Prize: Michael Jack Goodman, B.A. Oxon. The Robert Innes Prize: The examiners reported that there was no candidate qualified for this Prize. The Maurice Nordon Prize: Peter Ross Milligan, LL.B. Leeds. The Local Government Prize: Peter Donald Stuart Nicholls. The John Marshall Prize: Sidney Carson, LL.B. London. The Justices' Clerks Society's Prize: Joseph Ingham. The Cecil Karuth Prize: Peter Donald Stuart Nicholls. The Samuel Herbert Easterbrook Prize: Pamela Leila Hart. The Geoffrey Howard-Watson Prize: Reginald George Jones. The Reginald Pilkington Prize: Michael Jack Goodman, B.A. Oxon. LOCAL PRIZES.—The Atkinson Conveyancing Prize for Liverpool or Preston Students: Gordon Christison Lindsay, LL.B. Liverpool. The Rupert Bremner Medal for Liverpool Students: The examiners reported that there was no candidate qualified for this Prize. The Timpron Martin Prize for Liverpool Students: Christopher Raynor Hewetson, B.A. Cantab. The Birmingham Law Society's Gold Medal: The examiners reported that there was no candidate qualified for this Prize. The Birmingham Law Society's Bronze Medal: Peter Donald Stuart Nicholls. The City of London Solicitors' Company's Prize: Mark Hebberton Sheldon, B.A. Oxon. The City of London Solicitors' Company's Grotius Prize: Robert David Millett, B.A., LL.B. Cantab. The Frederic Drinkwater Prize: Ronald Broxton Taylor. The Sir George Fowler Prize: John Gwynne Grenfell, B.A. Oxon. The Stephen Heelis Gold Medal for Manchester and Salford Students: Peter Frank Halliwell, LL.B. The Mellersh Prize: Ronald Sells. The Newcastle upon Tyne Prize: Henry Edward Markson, LL.B. Durham. The Wakefield and Bradford Prize: Paul Leo Quin, LL.B. Leeds. The Render Prize: Ian Vincent Haigh. The William Hutton Prize: Eric William Thomson Dalkin. (*Note.*—The Council have also awarded a further prize in respect of the year 1955 to Alan Henderson Crute, LL.B. Durham.) The Alfred Syrett Prize: Anthony Henry Howe.

Wills and Bequests

Mr. Herbert Freeman Chatwin, solicitor, of Nottingham, left £31,792 (£31,728 net).

OBITUARY

MR. I. M. HEZLETT

Mr. Ian Moore Hezlett, solicitor, of Windsor, and for many years clerk to the Windsor magistrates, died recently, aged 50. He was admitted in 1934.

MR. W. PLEASS

Mr. William Pleass, retired clerk to Burnham-on-Sea Urban District Council, died on 1st April, aged 80.

CASES REPORTED IN VOL. 101

23rd March, to 13th April, 1957

For cases reported up to and including 16th March, see *ante*, p. 252

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